## EXHIBITS B1-B18

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United Auburn Indian Community of the Auburn Rancheria

Jessica Tavares Chairperson JOHN SUEHEAD VICE CHAIR DAVID KEYSER SECRETARY

DOLLY SUEHEAD TREASURER GENE WHITEHOUSE COUNCIL MEMBER

May 28, 2009

Via Facsimile 916-263-0452

California Gambling Control Commission ATTN: Evelyn Matteucci, Chief Counsel 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

RE: Response to CGCC April 16, 2009, Comments

Dear Chairman Shelton, Commissioner Vuksich, and Commissioner Shimazu:

The United Auburn Indian Community ("United Auburn" or the "Tribe") submits these comments in response to your request by letter dated April 16, 2009. We do want to note, however, that your timeframe of May 29 for submission of comments is not set by the Compact or reached through any consultation with our Tribe or our Tribal Gaming Agency.

United Auburn supports and ensures strong, effective, and efficient regulation of our Thunder Valley Casino. Our Tribal Gaming Agency and the National Indian Gaming Commission ("NIGC") monitor and enforce the operation's compliance with the federal and tribal minimum internal control standards ("MICS").

We believe a critical component of achieving strong, effective and efficient regulation necessarily includes adherence to the jurisdictional boundaries and regulatory provisions established by the Tribal-State Gaming Compacts or other written enforceable agreements among the state and tribal government or our respective regulatory agencies. Therefore, we object to your proposed action to adopt the new proposed regulation, entitled CGCC-8, on June 19, 2009, at a California Gambling Control Commission ("CGCC") hearing "as a final regulation."

The new proposed CGCC-8 has not been *submitted* to the Tribal-State Gaming Association ("Association") for approval as required by Compact Section 8.4.1, as we note it is not the same regulation submitted to and disapproved by the Association in 2008. In any case, the proposed regulation has not been approved by the Association, as required by Section 8.4.1. Additionally, while we recognize several positive changes to the new proposed regulation from the former proposal rejected by the Association, including the removal of the financial audit provision, it unfortunately continues to exceed the authority granted to the State Gaming Agency in our Compact and remains objectionable under Compact Section 8.4.1, as unnecessary, duplicative, unduly

burdensome, unfairly discriminatory, and conflicting with a final published regulation of the NIGC. (See our comments of November 18, 2008, incorporated herein by reference).

For instance, while we support the concept of full recognition of NIGC compliance reviews and audits, the new section entitled "NIGC Alternative Compliance" is unfortunately disappointing. Among other things, the section calls for a state compliance review/audit of a federal compliance review/audit. It fails to recognize that the NIGC, with years of experience, is the agency designing its own reviews/audits to monitor, ensure, and enforce MICS compliance. This "Alternative Compliance" section would apply for tribes only if the federal agency, NIGC, provides directly to the CGCC its confidential internal work papers – something we are informed the NIGC has not represented it would do. This requirement appears to be a poison pill that renders the section meaningless.

We urge the State to work with the Association and its Task Force to draft a proposed regulation that is consistent with and authorized by the Compact for submission to the Association for approval, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

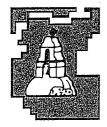
Our comments are provided in summary fashion and are not exclusive. Any point or argument not made herein is not waived.

Sincerely,

essica Tavares, Chairperson

United Auburn Indian Community

Cc: Ron Jaeger, United Auburn Indian Community Tribal Gaming Agency Chairman Jane G. Zerbi, Esq.



Ph: (760) 891-3500 Fax: (760) 742-1411

#### PALA BAND OF MISSION INDIANS

35008 Pala Temecula Rd. PMB 50 Pala, CA 92059

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May 20, 2009

Via Facsimile 916 263-0452

California Gambling Control Commission ATTN: Evelyn Matteucci, Chief Counsel 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

RE: CGCC April 16, 2009, Correspondence

Dear Chairman Shelton, Commissioner Vuksich, and Commissioner Shimazu:

The Pala Band of Mission Indian ("Pala Band" or the "Tribe") submits these comments in response to your request by letter dated April 16, 2009. We do want to note, however, that your timeframe of May 29 for submission of comments is not set by the Compact or reached through any consultation with our Tribe or Pala Gaming Commission.

The Pala Band supports and ensures strong, effective, and efficient regulation of our Pala Casino Resort Spa. The Pala Gaming Commission and the National Indian Gaming Commission ("NIGC") monitor and enforce the operation's compliance with the federal and tribal minimum internal control standards ("MICS").

We believe a critical component of achieving strong, effective and efficient regulation necessarily includes adherence to the jurisdictional boundaries and regulatory provisions established by the Tribal-State Gaming Compacts or other written enforceable agreements among the state and tribal government or our respective regulatory agencies. Therefore, we object to your proposed action to adopt the new proposed regulation, entitled CGCC-8, on June 19, 2009, at a California Gambling Control Commission ("CGCC") hearing "as a final regulation."

For instance, while we suggest the concept of full recognition of NIGC compliance reviews and audits, the new section entitled "NIGC Alternative Compliance" is unfortunately disappointing. Among other things, the section calls for a state compliance review/audit of a federal compliance review/audit. It fails to recognize that the NIGC, with years of experience, is the agency designing its own reviews/audits to monitor, ensure and enforce MICS compliance. This "Alternative Compliance" section would apply for tribes only if federal agency, NIGC, provides directly to the CGCC its confidential internal works papers – something we are informed the NIGC has not represented it would do. This requirement appears to be a poison pill that renders the section meaningless.

We urge the State to work with the Association and its Task Force to draft a proposed regulation that is consistent with and authorized by the Compact for submission to the Association for approval, or alternatively, to work with our Tribe to draft regulatory standards and provisions applicable to our gaming operation authorized by a binding memorandum of agreement or compact amendment between the State and our Tribe.

Our comments are provided in summary fashion and are not exclusive. Any point or argument not made herein is not waived.

Sincerely,

Robert Smith, Chairman

Pala Band of Mission Indians

Cc: Anthony Barnes, Pala Gaming Commission Chairperson Jane G. Zerbi, Esq.

## Rincon Band of Luiseño Indians

PO Box 68 · Valley Center · CA 92082 · (760) 749-1051 · Fax: (760) 749-8901 May 28, 2009



California Gambling Control Commission 2399 Gateway Oaks Drive #100 Sacramento, California 95833

Re: Rincon Band of Luiseño Indians Opposition to CGCC's Actions to Unilaterally Impose Any Version of CGCC-8 Upon California Indian Tribes

Members of the California Gaming Control Commission:

The Rincon Band of Luiseño Indians ("Band") continues to oppose the CGCC's efforts to adopt CGCC-8 in the strongest of terms. The Band encourages the CGCC to withdraw this proposed regulation and instead work cooperatively with <u>all</u> tribes with 1999 Proposition 1A Compact in effect<sup>1</sup> to find a solution to the CGCC's general concerns that is within the metes and bounds of the Compact.

The Band opposes the CGCC's stated action plan regarding CGCC-8 for the following reasons:

- 1. The Revised CGCC-8 Is A New Regulation Which Must Be Submitted To The Association.
- 2. The Compact Has A Process For State Gaming Agency Regulations Which Is Not Being Followed.
- 3. CGCC-8 Is A Compact Amendment.
- 4. There Is No Need For The Regulation.
- 5. Compact Amendments And Regulations Thereto Must Be The Subject Of Government-to-government Negotiations, Not Agency Fiat.
- 6. The NIGC Alternative Compliance Provision is ineffective as, Per the *CRIT* Decision, the NIGC Does Not Have Authority to Regulate Class III Gaming Operations.

<sup>&</sup>lt;sup>1</sup> Rincon recognizes that the State has entered into compacts with other tribes since 2000 that have different provisions governing the issue of MICS and state authority. Rincon objects to the State using its authority under those compacts as authority to impose the proposed MICS upon Rincon. Indeed, the fact that different provisions governs those Tribes underscore the inappropriateness of the CGCC's current proposal outside of the compact negotiation context.

#### April 16<sup>th</sup> Letter to Tribal Leaders

In your April 14, 2009 letter to Tribal Chairpersons, you have stated that the CGCC intends to hold a public hearing and adopt CGCC-8 as a final regulation. We have reviewed the CGCC's revised CGCC-8 and are surprised that the CGCC would take such action as the revised regulation contains a considerable amount of changes. Based upon the sheer volume of changes to the regulation, it is appropriate and necessary for the CGCC to re-submit the new regulation to the Association for review as the "revised" regulation is for all practical purposes a new regulation. So that you may see a physical representation of the dramatic changes to the regulation, we have attached a redline comparison of the CGCC-8 regulation dated April 15, 2009, against the CGCC-8 regulation dated October 1, 2008.

In light of the substantial changes to CGCC-8, it is appropriate and important that the CGCC to continue to follow the Agreed Upon Protocol For Submission Of Proposed State Regulatory Standards To The Association ("Protocol") and submit the revised CGCC-8 dated April 15, 2009 to the Association for review.

One of the most notable changes to the regulation is the "Safe Harbor" provision which provides a limited exemption from the regulation for those tribes which have amended their gaming ordinance to authorize the NIGC MICS oversight and enforcement authority. This new provision and concept is quite surprising in that the CGCC has been very clear in its written and oral opposition to such a concept. Furthermore, while that concept may be consistent with meetings and conversations that the CGCC has had with a limited number of Indian tribes 'off the record', that concept is not reflective of a majority of the comments presented at any Association meeting, nor has that concept been endorsed by the Association.

The regulation has been substantially altered without presentation to or input from the Association, accordingly, it is reasonable and appropriate to have meaningful discussions between the Association and the State Gaming Agency regarding this new regulation. Additionally, in light of the substantial changes, it is appropriate that (after presentation) the Association Regulatory Standards Task Force provide a new statement of need for the regulation which reflects the new language.

The CGCC's position that it may unilaterally impose regulations upon tribal gaming operations is without support in the 1999 Compact or any other law. As more recent tribal-state gaming compacts have substantially altered the State Gaming Agency regulation adoption provisions of the 1999 Compacts by omitting the 1999 Compact Section 8.4.1 process, and provided the CGCC with new expansive rulemaking authority<sup>2</sup>, it appears clear that the Governor and the CGCC are both well aware of the lack of authority within the 1999 Compact.

The legal relationship between the State and tribal compact signatories regarding Class III gaming is governed by the terms of the Compacts, not by agency fiat. We encourage the CGCC and its staff to review the terms of the Compact and if it feels that changes to the

<sup>&</sup>lt;sup>2</sup> <u>See</u> Sections 9.6 and 9.7 of the 2008 Tribal-State Gaming Compact Between the State Of California and the North Fork Band of Mono Indians which gives broad authority to the State Gaming Agency to adopt State Gaming Agency regulations which will be applicable to the Gaming Operation.

regulatory structure need to be made, then the appropriate course of action is for the CGCC to encourage the Governor to engage in Compact amendment negotiations with the Band.

#### The New CGCC-8 Appears to Encourage a Lack of Uniformity

Keeping with at least one of the purposes of Section 8.4 of the Compact ("In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state") the CGCC has stressed the need for a uniform baseline of MICS regulation for all tribal gaming operations in California. The following is a statement of such from the CGCC:

In light of the fundamental importance of MICS in protecting the integrity of the Gaming Activities and ensuring the successful functioning of Class III Gaming operations, it is appropriate for the SGA to adopt uniform, minimum requirements for MICS: that is, to require TGAs to adopt MICS which equal or exceed the MICS as promulgated by the NICG [sic] as of October 1, 2006 and to require each tribal Gaming Operation to implement internal control systems that ensure compliance with the TGA MICS.

<u>See</u> October 9, 2008 California Gambling Control - Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8).

This strong stand for baseline uniformity appears to be significantly undercut by the CGCC's new version of CGCC-8. The regulation provides that to comply with the regulation the Tribe may either adopt the NIGC MICS, or it may choose to adopt Alternative Tribal MICS, if the Tribe can "demonstrate to the CGCC that its Tribal MICS comply with the Compact." See Section (b)(3)(B) of CGCC-8 Dated April 15, 2009. This is clearly not a uniform standard. As the 1999 tribal-state gaming compacts make no reference to the NIGC MICS, there is no requirement that an individual Tribe's MICS need to be reflective of the NIGC MICS to be compliant with the compact. Accordingly, it is quite plausible that Tribal MICS which are compliant with the Compact would not necessarily be completely reflective of the NIGC MICS.

Leaving it to the sole discretion of the CGCC to determine whether an individual Tribe's MICS are compliant with each Tribe's compact is unacceptable. Furthermore this leaves the opportunity for a lack of uniformity on MICS regulation, as long as the CGCC approves this lack of uniformity. The Band does not endorse the concept of the CGCC-8 or requirement of NIGC MICS, instead this brief discussion is intended to highlight how far afield the CGCC has gone in its attempts to unilaterally adopt a regulation without legal authority.

The NIGC Alternative Compliance Provision is ineffective as, Per the CRIT Decision, the NIGC

Does Not Have Authority to Regulate Class III Gaming Operations

The new CGCC-8 dated April 15, 2009 includes a form of exemption (NIGC Alternative Compliance) for those Tribes who have acceded to NIGC oversight and enforcement authority through an amendment to their tribal gaming ordinance, provided further that the NIGC completes a comprehensive MICS audit no less than every three years, and provided further that

the vast majority of documents prepared in conjunction with the audit are received by the CGCC from the TGA or the NIGC.

The Band feels compelled to point out that the NIGC Alternative Compliance carve-out from the CGCC-8 appears to be illusory as pursuant to the *CRIT* decision, the NIGC does not have the authority to exercise enforcement authority over Class III MICS, nor does the NIGC have a separate "statutory basis empowering the Commission to regulate Class III gaming operations." *See Colorado Indian River Tribes v. National Indian Gaming Commission*, 466 F.3d 134, 140 (D.C. Cir. 2006). The issue of whether the NIGC has authority to adopt and enforce the MICS through other methods was reviewed in the Court of Appeals *CRIT* decision and such authority was found absent.

The Court of Appeals specifically reviewed whether the Commission's statutory authority to "promulgate such regulations and guidelines as it deems proper to implement the provisions of [the Act]" could be an alternative means for the NIGC to regulate Class III gaming. Id. at 135 quoting 25 U.S.C. §2706(b)(10). Upon review of this issue, the Court found that as the NIGC did not have authority to adopt and implement MICS, the Commission also did not have authority through other means to regulate Class III gaming. Indeed, in the NIGC's petition for rehearing, the NIGC requested the Court of Appeals to limit its holding to a finding that the NIGC merely did not have the a statutory basis to "promulgate regulations governing procedures for class III gaming operations," rather than the Court of Appeals more expansive holding that the IGRA did not contain a statutory basis for the NIGC to regulate Class III gaming operations. Upon review of this issue, the Court of Appeals rejected the NIGC's petition and limited alternative finding in toto. Accordingly, the Court of Appeals holding that the NIGC lacks a statutory basis empowering the NIGC to regulate Class III gaming operations stands.

Lacking a statutory basis for the NIGC to regulate Class III gaming operations, there is no authority for the NIGC to enforce MICS through any other means. If there is no authority by other means for the NIGC to enforce Class III MICS, then the NIGC Alternative Compliance Safe Harbor provision of CGCC-8 is ineffective.

#### The Tribal Gaming Agency is the Primary Regulator

Pursuant to the Compact between the State of California and the Rincon Band, the Tribal Gaming Agency ("TGA") is the primary regulator of all aspects of gaming, gaming operation and management of the Rincon Band's gaming operation. See Compact §§ 7.1, 7.2, 8.1 see also 25 U.S.C. 2701 et seq. The TGA (also "Rincon Gaming Commission") is solely vested with the authority and responsibility for promulgation and enforcement of rules and regulations regarding Minimum Internal Control Standards ("MICS"). The Rincon Gaming Commission has adopted MICS and enforces those standards. There is no language within the Compact, or elsewhere in federal law, which delegates promulgation and enforcement authority of MICS to the State Gaming Agency. Furthermore, the Compact does not vest the CGCC with the authority to unilaterally adopt and enforce rules pursuant to section 8.4 of the Compact over the objection of the Association.

Just as the Compact does not provide the CGCC expansive authority to summarily adopt and enforce regulations, a regulation without legal authority cannot grant new and expansive powers to the CGCC. Should the CGCC wish to assume a regulatory role that is different than that described within the Compact, the appropriate venue for such a change is government-to-government negotiations and the Compact amendment process.

#### There is no Void in Regulation

The substance of CGCC-8 is unnecessary as there is no void in regulation. The Rincon Gaming Commission regulates internal control standards, auditing, and variances to internal control standards. Any effort by the CGCC to implement CGCC-8 is unnecessary and duplicative, in addition to being a violation of the Compact.

The Compact clearly provides that each Tribal Gaming Agency is vested with the authority to promulgate and enforce regulations regarding on-site gaming regulation. The terms of the Compact were not altered by the *CRIT* decision. *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (D.C. Cir. 2006). The CGCC's previous response to Association comments improperly asserts that the *CRIT* decision "effectively eliminated the federal government's authority and jurisdiction to regulate Class III gaming in California, at least with regard to the Class III MICS." That is simply not true. Rather, the *CRIT* decision confirmed that NIGC never possessed such authority. The NIGC had no such authority in 1999 when the Compact was consummated. If the State wanted the authority it now seeks, it should have done so in the context of the Compact negotiated in 1999.

Tribal Gaming Agencies, including the Rincon Gaming Commission, continue to effectively regulate Indian gaming. As further evidence, the regulations of the Rincon Gaming Commission include MICS which are no less rigorous that those found at 25 CFR § 542 et seq. As there is no void in regulation, there is no need for CGCC-8.

#### The State Has Failed to Demonstrate that the Existing Compact Provisions Are Inadequate

Repeatedly throughout the last two years, the CGCC Chairman has asserted that there are Tribes out there operating without MICS or not enforcing MICS. However the CGCC has failed to document or identify such a Tribe. Even if the allegation is true, that Tribe would then be in violation of Compact §§ 7.1, 7.2 and/or 8.1. The State has the access needed to learn whether a violation exists and has enforcement authority under the Compact to cause corrective measures to be taken. The unsubstantiated motive for proceeding does not justify imposition of CGCC-8 on all Tribes. Rather, it justifies taking action against the unidentified tribe(s) under the existing Compact.

## The Compact does not Provide the CGCC with the Authority to Unilaterally Amend the Compact

The adoption and enforcement of CGCC-8 is in excess of the CGCC's authority as the Compact does not provide the CGCC with plenary power to modify the terms of the Compact at will. There is no provision within the Compact which states that the State Gaming Agency may



promulgate and enforce the terms of CGCC-8 without Association approval. While the Compact provides the State with access to a Tribe's Gaming Facility and limited inspection rights of "papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance" with the Compact, there is no provision within the Compact which authorizes the State Gaming Agency to unilaterally alter the terms of the Compact and enact and enforce regulations regarding MICS.

The Compact specifies a very limited role to the State Gaming Agency when considering regulations. That limited and very specific role is to submit proposed regulations to the Association for approval. Pursuant to Section 8.4.1(a):

Except as provided in subdivision (d) [Exigent Circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

Again, the express terms of the Compact provide that, except in exigent circumstances, a State Gaming Agency regulation <u>cannot</u> be immediately effective unless it is both (1) approved by the Association and (2) the Tribe has an opportunity to review and comment on the proposed regulation. These are the clear and plain terms of Section 8.4.1(a).

Any argument that the CGCC's reading of sections 8.4.1(b) or 8.4.1(c) can serve to negate the clear terms of 8.4.1(a) and provide a process whereby the CGCC can unilaterally enact and enforce a regulation would result in a completely unreasonable reading of the Compact. Under the CGCC's reading of 8.4.1, the language requiring approval by the Association would have no effect. The plain and specific terms of 8.4.1(a) cannot be negated merely upon unilateral demand by the CGCC. As such a reading is unreasonable and would result in absurd results, it should be clear to the CGCC that the Compact does not authorize the State Gaming Agency to unilaterally adopt regulations over the objection of the Association.

The Compact is clear in Section 8.4.1. A State Gaming Agency regulation which is intended to apply to a Tribe must be approved by the Association prior to such regulation becoming effective. If the rule is rejected by the Association, then the State Gaming Agency may submit the proposed regulation to Indian Tribes for review and comment. These comments may then be useful to the State Gaming Agency when revising a proposed State Gaming Agency regulation for presentation to the Association for review and possible approval. Accordingly, sections 8.4.1(b) and (c) are not "mere surplusage" as they serve a clear purpose. The clear terms of Section 8.4.1 of the Compact provide that this is a collaborative process which is ultimately subject to vote by the Association. Even in the instance of an "exigent circumstances" regulation promulgated pursuant to 8.4.1(d), while the regulation becomes effective immediately, it is still subject to a subsequent vote by the Association and shall "cease to be effective" immediately if disapproved by the Association.

The proposed CGCC-8 circumvents the Compact amendment provisions of the existing Compact. It is a rewrite of sections 7 and 8, which designate the Tribal Gaming Agency as the



entity establishing the minimum internal controls and enforcement of those controls. The proposal supplants the TGA with the CGCC and as such is subject to the Compact amendment process.

#### Government-to-government Discussions are Appropriate in this Instance.

The proper forum for State Gaming Agency authority over the substance of CGCC-8 is the Compact amendment process. Any effort other than a government-to-government negotiation for amendment of the Compacts is void ab initio.

The Band would like to make it clear that there is a forum for this issue and that forum is the government-to-government Compact amendment process. The Band does not support the concept of amending the Compact without meaningful substantive negotiations of all issues of import to both the Band and the state. We encourage the CGCC to bring its concerns to the Governor so that his office may initiate government-to-government negotiations regarding a Compact amendment.

#### CGCC Adoption of the April 15, 2009 Version of CGCC-8

The April 16, 2009 letter from the CGCC to Tribal Leaders states that the CGCC intends to adopt CGCC-8 at a Commission meeting dated June 19, 2009. We are concerned that the CGCC may feel (albeit wrongly) that it has the legal authority to declare the regulation immediately applicable to tribal gaming operations in California. If this is indeed the position of the CGCC, we strongly urge the Commission to reevaluate this position and instead enter into real substantive discussions with <u>all</u> tribal gaming agencies and the Association regarding Minimum Internal Control Standards.

The Band incorporates by reference, previous comments and testimony submitted by the Band, and the formal response of the Association. The Band reserves the right to advance additional arguments against CGCC-8 at appropriate times and in additional forums as this process proceeds. The Band encourages the CGCC to immediately cease its efforts to unilaterally adopt and enforce CGCC-8 and instead comply with the clear and express terms of the Compact.

Respectfully,

Bo Mazzetti

Chairman

Rincon Band of Luiseño Indians



#### Rumsey Band of Wintun Indians

TRIBAL COUNCIL

Marshall McKay Chairman

Leland Kinter Secretary

Anthony Roberts
Treasurer

Mia Durham Member

James Kinter Member

# Rumsey Indian Rancheria

**Уосна- Dе- Не** 

May 28, 2009

#### VIA FACSIMILE AND FEDERAL EXPRESS

Evelyn M. Matteucci, Esq. Chief Counsel California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 100 Sacramento, California 95833

Re: Rumsey Indian Rancheria Comments To Revised CGCC-8

Dear Ms. Matteucci:

As the Chairman of the Rumsey Band of Wintun Indians (the "Tribe"), I write on the Tribe's behalf in response to the California Gambling Control Commission's April 16, 2009 letter submitting to the Tribe for comment the April 15, 2009 version of proposed regulation CGCC-8. Before setting out the Tribe's substantive comments to CGCC-8, we want to again express our procedural objections to the CGCC's adoption of the regulation.

#### A. PROCEDURAL OBJECTIONS

At the September 4, 2008 Tribal-State Association ("Association") meeting, every single tribe in attendance, as well as the Department of Justice's Bureau of Gambling Control (which is one half of the State Gaming Agency ("SGA")) voted against the adoption of CGCC-8. The CGCC accounted for the single vote in favor of the regulation. Despite the fact that even the SGA could not agree on the adoption of the proposed regulation, the CGCC is again trying to unilaterally impose it on every gaming tribe with a Tribal-State Compact.

In my November 19, 2008 letter to you, the Tribe advised the CGCC of the procedural bar to the unilateral adoption and imposition of CGCC-8. The CGCC did not respond to my letter and, to date, has never explained how it can overcome that procedural bar. As we previously explained, what the CGCC seeks to do not only violates common sense, it is inconsistent with the Compact's terms and contrary to applicable law.

#### 1. The Compact's Terms Prohibit The Unilateral Imposition Of CGCC-8

The Compact between the Tribe and the State contemplates checks on the SGA's efforts to impose regulations on the Tribe. One check comes in the form of section 8.4.1(a), which states:

Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

This language unambiguously imposes two requirements before a regulation may become "effective with respect to the Tribe's Gaming Operation": (1) the Association must first approve the regulation and (2) the Tribe must have the opportunity to review and comment on the proposed regulation. The *sole* exception to section 8.4.1(a)'s absolute language is in the case of exigent circumstances, as provided in section 8.4.1(d).

Despite this unequivocal language, the CGCC apparently still believes section 8.4.1(b) is an exception to section 8.4.1(a)'s requirement of Association approval. Section 8.4.1(b)'s own language demonstrates this belief is misguided:

Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

Nothing in section 8.4.1(b) even hints at an intent by the parties to eliminate the requirement that the Association approve any SGA regulation before it becomes effective. Rather, section 8.4.1(b) merely imposes two additional procedural requirements bearing on the regulation process, both of which are consistent with the requirement of Association approval.<sup>2</sup>

While your April 16 letter does not state this point, the CGCC's October 9, 2008 Detailed Response To Tribal-State Association Objections explicitly argued (at page 1, footnote 2) that section 8.4.1(b) "provides a clear exception" to the Association approval requirement.

For example, section 8.4.1(b)'s second sentence spares the Tribe from the effort and expense of commenting, pursuant to section 8.4.1(c), on a regulation that the SGA could later amend in response to the Association's disapproval. Without it, the regulation could be

Evelyn M. Matteucci, Esq. May 28, 2009 Page 3

Section 8.4.1(c) imposes another procedural step that is necessary prior to the implementation of a regulation, but which does not permit implementation where the section 8.4.1(a) prerequisite has not been met:

Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

Nowhere does section 8.4.1(c) provide that a proposed regulation actually becomes effective 30 days after submission to the Tribe, much less that it could become effective notwithstanding a lack of Association approval, which section 8.4.1(a) explicitly requires.

Accordingly, the language of sections 8.4.1(b) and (c) does not purport to create exceptions to the requirement of Association approval, and rather functions solely to impose additional prerequisites before an SGA regulation can take effect. Further proof of this point is that, as noted above, section 8.4.1(a) contains specific exception language with respect to subsection (d) ("[e]xcept as provided in subdivision (d) . . ."), demonstrating that the parties knew how to carve out exceptions with respect to the Association approval requirement. They obviously did not do so as to sections 8.4.1(b) or (c), because those sections are not exceptions to section 8.4.1(a).

The CGCC asserts, without explanation, that the Tribe's reading renders section 8.4.1(b) surplusage. Contrary to the CGCC's contentions, section 8.4.1(b) serves important functions in the procedural scheme without reading the Association-approval requirement out of the Compact. See Boghos v. Certain Underwriters at Lloyd's of London, 36 Cal. 4th 495, 503 (2005) (construction of a contract did not render one provision surplusage where, given some set of facts, the provision "continues to have real effect"). The CGCC's mere desire that section 8.4.1(b) do more than its language supports – that is, that it anoint the CGCC with unilateral regulatory power over Indian country – does not justify ignoring subsection (a)'s plain language. See e.g., Cal. Civ. Code § 1641 ("The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.")

submitted to the Tribe immediately following the Association's disapproval, requiring the Tribe to provide its comments within 30 days thereafter, even though the SGA might opt to amend the regulation in order to win Association approval. Since the CGCC has now indeed opted to amend CGCC-8, it must re-submit it to the Association for approval.

#### Applicable Law Prohibits The Unilateral Imposition Of CGCC-8

As explained above (and in my November 19, 2008 letter), section 8.4.1(a) unmistakably makes Association approval a prerequisite for an SGA regulation to be effective as to the Tribe. However, even if section 8.4.1 could be read as a whole to be ambiguous, any ambiguity would have to be construed against state regulatory jurisdiction. As the California Supreme Court has recognized, "a state may not impose general civil/regulatory laws on the reservation." People Ex. Rel. Department of Transportation v. Naegele, 38 Cal. 3d 509, 521 (1985) (citing Barona Group of Captain Grande Band v. Puffy, 694 F.2d 1185 (9th Cir. 1982)); see Bryan v. Itasca County, 426 U.S. 373, 376 (1976). State laws purporting to regulate tribal gaming are no exception. Barona Group, 694 F.2d at 1190 (absent tribal consent, state lacked authority to regulate bingo games operated by Indian tribes on Indian land); see 25 U.S.C. § 2701(5) ("Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."). As such, the section 8.4.1(a) limitation must be "strictly construed" in the Tribe's favor. Lawrence v. Barona Valley Ranch & Resort, 153 Cal. App. 4th 1364, 1369 (2007); C&L Enterprises v. Citizens Band of Potawatomi, 532 U.S. 411, 418 (2001).

More important, the CGCC's reading of section 8.4.1 permits the CGCC to disregard the will of each and every tribe and to unilaterally implement regulations specifying details about how each tribe regulates its gaming operation. The CGCC's reading also gives it the power to disregard objections not only from the tribal regulators who are part of the Association, but also from the other State agency with a role in the regulatory process, the Bureau of Gambling Control. In other words, the CGCC claims it can implement a regulation binding on tribal governments even if the Department of Justice and gaming regulators from every single gaming tribe oppose it. If this proposition were true, it would mean the CGCC, alone, has the unilateral right to impose any regulation it wants, almost without regard to subject or substance, on California tribes. That is obviously not the case.

Permitting the State to implement regulations without any effective procedural check in favor of the tribes substitutes unilateral State regulation for the government-to-government arrangement the Compact contemplates. (See Compact, § 1.0(a) (Compact terms "designed and intended to . . . Evidence the goodwill and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship . . .") It is patently false to suggest the tribes agreed to the Compact knowing that the State, otherwise lacking any regulatory jurisdiction over tribes and tribal government, would have unchecked authority to unilaterally implement regulations governing tribal gaming. In reality, the Compact contemplated tribal regulation of its gaming operation, along with the potential for the implementation of certain SGA regulations that could gain support of a body comprised of gaming regulators from the tribes, the Bureau of Gambling Control, and the CGCC. Common sense, the plain language of section 8.4.1, and applicable law mandate such a reading.

As noted above, to the Tribe's knowledge the CGCC has never addressed this procedural bar to its adoption and implementation of CGCC-8. We would therefore greatly appreciate a response from the CGCC, in writing, to the issues raised here.

#### B. SUBSTANTIVE OBJECTIONS TO CGCC-8

As your April 19 letter correctly explains, the CGCC has amended CGCC-8 to address some of the substantive comments provided by various California tribes. While the revisions to the regulation evince a small move by the CGCC away from its consistently high-handed and disrespectful approach to its relations with tribes, the regulation still provides the CGCC with powers which it does not have under the Compact. That Compact, along with any regulations approved by the Association, set out the entirety of rights and obligations between the Tribe and State. Thus, the Tribe incorporates by reference its prior objections to CGCC-8, as well as those in the February 13, 2008 Final Report from the Association's Regulatory Standards Task Force. In addition, the Tribe raises the following specific objections to the April 15, 2009 revised version of CGCC-8, and requests that the CGCC address these objections.

#### 1. CGCC-8 As Revised Is Still A Compact Amendment Through Regulation

The fundamental problem with CGCC-8 has always been – and continues to be – that it states a false premise as the basis to arrogate to the CGCC powers the CGCC does not have under the Compact. According to the revised CGCC-8, the Tribe is "require[d] . . . under sections 6.0, 7.0 and 8.0 of the Compact . . . to adopt and maintain Tribal minimum internal control standards" and to "enforce those Tribal MICS." The regulation further asserts that the Compact authorizes the SGA "to review each Tribe's Class III Gaming Operation for compliance with the Compacts [sic] including the Tribe's promulgation and enforcement of its own Tribal MICS."

In reality, the words "minimal internal control standards" appear nowhere in the Compact, and certainly not in sections 6, 7 or 8. CGCC-8's assertion to the contrary is nothing more than artless bootstrapping through which the CGCC reads into the Compact the federal MICS promulgated by the National Indian Gaming Commission ("NIGC"), and the power to enforce those MICS. What the Compact *does* state is that the Tribal Gaming Agency ("TGA") must promulgate and enforce "rules and regulations or specifications governing" certain specific subjects set forth in Compact sections 8.1 through 8.1.14. CGCC-8, however, goes far beyond what those Compact sections provide.

For example, CGCC-8 allows the Tribe to comply with the Compact's purported MICS requirement by adopting the MICS promulgated by the NIGC, or alternative versions that either meet or exceed the standards in those MICS or that "comply with the Compacts." (Revised CGCC-8, § (b).) CGCC-8 then provides the CGCC with the right to verify the Tribe's compliance with this "requirement" through various novel methods, including an "on or off-site inspection of the Tribal MICS pursuant to section 7.4 of the Compact," and



compliance review of "areas" such as internal audit and surveillance. (Revised CGCC-8, §§ (d), (g)(4).) Consistent with this line of reasoning, CGCC-8 envisions the "Tribe and TGA" providing any "papers, books, records and equipment" the CGCC "deems necessary to ensure compliance." (Revised CGCC-8, § (g)(4).)

There are several problems with this part of CGCC-8. First, of course, is the fact that the Compact says nothing about the adoption of MICS. In addition, Compact section 7.4 only allows the CGCC access to "Gaming Operation" documents. It does not allow the CGCC access to documents from the Tribe or its TGA, yet that is what CGCC-8 specifically requires. Moreover, the internal audit and surveillance functions at Cache Creek Casino Resort are under TGA control. Under the revised version of CGCC-8, the TGA would have to subject itself to CGCC review, which the Compact does not require.<sup>3</sup>

As another example of CGCC-8's overreaching, the Tribe challenges the CGCC to locate any mention – much less a requirement – in Compact sections 6, 7 or 8 for the Tribe to perform an "Agreed-Upon Procedures" audit and to forward the results of that audit to the CGCC. That provision does not exist in the Compact. It can, however, be found at section (f) of CGCC-8.

The CGCC may be tempted to respond that none of the above matters, since it does not apply under CGCC-8 section (o) by virtue of the Tribe NIGC-approved amended gaming ordinance. That response, however, would be misguided. First, CGCC-8 section (o) does not dispense with the requirement to comply with section (b), and thus still imposes obligations that do not exist under the Compact. Further, section (o) imposes on the Tribe a whole host of other obligations that are not in the Compact, including that the Tribe waive, in writing, confidentiality as to reports it receives from the NIGC, that the TGA provide to the CGCC documents prepared by and for the NIGC, that the TGA "make itself available" and produce documents to answer questions the CGCC may have regarding any audit or report from the NIGC, and that the Tribe provide to the CGCC the "Agreed-Upon Procedures" audit report.

Perhaps most egregious, CGCC-8 provides that section (o) no longer applies (that is, that all the rest of CGCC-8 does apply) if, among other things, the "NIGC does not perform, for any three (3) year period, a comprehensive on-site compliance review to monitor and ensure MICS compliance" as to virtually every area of the casino. (Revised CGCC-8, § (o)(2).) As a practical matter, this requirement wipes section (o) out of existence. In our experience, the NIGC does not perform "comprehensive" reviews such as the one section (o)(2) describes, particularly at properties such as Cache Creek, which is regulated by a highly sophisticated, award-winning TGA.<sup>4</sup> Even if that were not the case, the Tribe has no control

Not satisfied with this unwarranted expansion, the CGCC also requires that TGA staff subject themselves to "interviews" as part of the "review process." (Revised CGCC-8, § (g)(4).

You may be aware that Rumsey's TGA recently won the World Game Protection Association's 2009 awards for best table games and slots investigations. The awards are of

Evelyn M. Matteucci, Esq. May 28, 2009 Page 7

over the NIGC's inspection scope and schedule. The Tribe's regulatory scheme cannot be subject to the vagaries of an entity over which it has no control.

We would also like to reiterate a question the CGCC has consistently side-stepped. If it is true that CGCC-8 is not an amendment to the 1999 Compacts, perhaps the CGCC can explain why new Compacts the State has entered into with, among others, the North Fork Rancheria, have provisions that track those in CGCC-8. Along the same lines, the Compact amendments the State signed with several Southern California tribes in 2006 included Memoranda of Agreement ("MOA") that imposed on the tribes at issue the obligation to maintain and implement MICS, just as CGCC-8 attempts to do. If the CGCC truly always had, as it claims, the power under pre-2006 Compacts to do all that CGCC-8 provides, it would not have had to include the MOA in the 2006 Compacts. We note that the MOAs specifically provide that the MICS provisions they contain were "intended to supplement" – that is, add to – the respective tribes' Compact obligations. The Rumsey Tribe does not wish to have the CGCC "supplement" its Compact. Rather, that is something only the State and Tribe can accomplish as a result of government-to-government Compact negotiations.

#### 2. The SGA Already Verifies Compact Compliance

If, as your April 19 letter asserts, the CGCC is truly concerned with "follow[ing] and execut[ing] its obligations under the Compacts," the CGCC should focus on what the Compacts actually provide, not what the CGCC wishes they did.

The Tribe readily acknowledges the SGA has the authority to conduct compliance reviews as to Sections 6, 7, and 8 of the Tribe's Compact with the State. And, as we have explained before, the SGA has exercised that authority numerous times at Cache Creek Casino Resort. Indeed, since the Compact went into effect, the Bureau of Gambling Control's agents and analysts have performed Compact compliance reviews at Cache Creek nearly a dozen times. In connection with these compliance reviews, the Rumsey TGA has on many occasions provided to the Bureau of Gambling Control, and even the CGCC, copies of Cache Creek's System of Internal Controls ("SIC"). The SIC is a document that explains, in great detail, how Cache Creek complies with each and every regulation the Rumsey Tribal MICS contain. The Tribal MICS, in turn, exceed the requirements of the NIGC's MICS. So, the question here is this: If the SGA already is empowered under the Compact to ensure Cache Creek's compliance with the SIC as it relates to the many topics listed in Compact sections 8.1.1 through 8.1.14, and the SIC is a specific application of the MICS, then why is CGCC-8 necessary? The answer is that it is not. Whatever the CGCC seeks through CGCC-8, it is not Compact compliance. Rather, CGCC-8 appears to be yet one more calculated attempt by the State to impose control over, and violate the sovereignty of, California's Indian tribes.

#### 3. The CGCC Has Failed To Consider In Good Faith Alternative Proposals

Some time ago, the Tribe's TGA submitted to the Association an alternative to CGCC-8. That proposal highlighted the authority the SGA actually has under the Compact. Specifically, under the Tribe's proposal, each tribal gaming agency would maintain an SIC that would equal or exceed the agency's established MICS. The SGA, in turn, could ensure each tribe's compliance with the SIC by conducting compliance reviews of the tribe's gaming operation. The SGA would then provide a draft written report of its findings to the tribe, which could either accept or dispute the findings. Disputes that could not be resolved informally or by the full CGCC would then be subject to the Compact dispute resolution process.

The Tribe continues to believe that no additional regulation is necessary. If the CGCC insists on implementing a regulation, the one the Tribe's TGA prepared is the only proposal that complies with the Compact. Even if the CGCC is unwilling to consider the Tribe's proposal, there are alternatives others (including the Bureau of Gambling Control) have proposed, and alternatives yet to be explored, that might win Association approval where CGCC-8, even in its revised form, cannot.

Again, we would like the CGCC to address, specifically and in good faith, each of the points raised in this letter. I look forward to hearing from you.

Sincerely,

Marshall McKay

Chairman

Rumsey Band of Wintun Indians

cc: Dean Shelton, Chairman, California Gambling Control Commission Stephanie Shimazu, Commissioner, California Gambling Control Commission Alexandra Vuksich, Commissioner, California Gambling Control Commission



### **BISHOP TRIBAL COUNCIL**

May 19, 2009

Honorable Mr. Dean Shelton, Chairman & Commission Members
Attention: Ms. Evelyn Matteucci, Chief Counsel State of California
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

2009 JCN - 3 AN IO: 48

#### Comments on Proposed Amended Uniform Tribal Gaming Regulation CGCC-008

Dear Honorable Chairman Shelton and Commissioners:

On behalf of the Bishop Paiute Tribe I write this letter in response to the Proposed Amended California Gambling Control Commission (CGCC) Re-Adoption of Uniform Regulation 008 - State Minimum Internal Control Standards letter mailed via-ground mail on April 17, 2009.

It is the position of the Bishop Paiute Tribe that the CGCC must adhere to the California Tribal-State Gaming Compact of 1999 Section 8 § 8.4.1.(a), (b), & (c) which states:

#### Section 8.4.1.

- (a) Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe' Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.
- (b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.
- (c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

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It is the opinion of the Bishop Paiute Tribe that CGCC-008 cannot be adopted without the Association approval, other than by Section 8.4.1. (d) by exigent circumstances, which was in this case was not enacted for approval under this guise.

The Bishop Paiute Tribe would also request clarification on the following:

- 1) Does the CGCC at some point in time, intend on submitting the "Amended Version of CGCC-8" to the Association for possible approval?
- 2) If so, what is the CGCC's prerogative with regard to Association's treatment of the "Amended Version of CGCC-8":
- a. Does the CGCC consider it a mere modified version of the original version of CGCC-8 which would be immediately ripe for an Association vote; or
- b. Does the CGCC consider it a substantially modified proposed regulation that is better served by presenting it as an "initial draft" and warranting Association review in the form of a Task Force; or
- c. Similar to (b) Does the CGCC consider the "Amended Version of CGCC-8" an entirely new proposed regulation warranting treatment as such by the Association under the Protocol.
- 3) If on the other and the CGCC does not intend to submit the "Amended Version of CGCC-8" to the Association, please provide such a written affirmation as soon as possible.
- 4) Would the Commission consider extending the comment period an additional 30 days?

Sincerely,

Monty Bengochia Tribal Chairman

Cc: Bishop Indian Tribal Council
Bishop Paiute Gaming Commission
Ms. Gloriana Bailey, General Manger Paiute Palace Casino

# FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

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#### FACSIMILE COVER SHEET

TO:

Evelyn Matteucci, Chief Counsel

FAX:

916-263-0452

FROM:

George Forman

DATE:

May 29, 2009

RE:

Soboba Band of Luiscño Indians' Comments re: Re-Adoption of Uniform Tribal

Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

TOTAL NUMBER OF PAGES (including cover sheet): 5

#### ORIGINAL WILL NOT FOLLOW

#### COMMENTS

See attached (and disregard previous fax).

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May 29, 2009

#### VIA FACSIMILE (916-263-0452) ONLY

Evelyn Matteucci, Chief Counsel California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Re: Soboba Band of Luiseño Indians' Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Ms. Matteucci:

Forman & Associates, Attorneys at Law, is legal counsel to the Soboba Band of Luiseño Indians ("Tribe"). Our client has requested that we submit on its behalf the Tribe's comments on the CGCC's April 15, 2009, draft of CGCC-8.

The revised draft marks an improvement, both in tone and substance, over the earlier draft that the CGCC had been prepared to impose. Nonetheless, we continue to regard CGCC-8 as an unnecessary solution to a non-existent problem. The Soboba Gaming Commission closely oversees the Tribe's gaming operation and has adopted and ensures compliance with standards that meet or exceed those promulgated by the NIGC. The oversight provided for in CGCC-8 is simply unnecessary.

Moreover, the Tribe strongly disagrees with the CGCC's apparent position that it can impose this revised version of CGCC-8 on tribes without resubmitting it to the Association for the Association's approval. The Commission's position cannot be reconciled with the plain language of Section 8.4.1(a) of the 1999 Compact:

Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and

Evelyn Matteucci, Chief Counsel California Gambling Control Commission May 29, 2009 Page 2

Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (Emphasis added.)

Finally, the revised draft falls short in one significant respect. We and a number of other tribes have recommended the inclusion of language to the effect that disputes that cannot be resolved through meeting and conferring between the TGA and CGCC staff must be submitted to a third-party neutral for preliminary resolution, and that if the neutral rules for the State, the State cannot resort to §9 dispute resolution or §11 termination proceedings unless the Tribe fails timely to comply with the neutral's decision. We continue to believe that including such a provision would ensure that a dispute over MICS interpretation or compliance cannot trigger a State allegation of material breach, with its potential to put a compact at risk, until all reasonable alternatives have been exhausted. On the following page, we have suggested language that, if included, would largely address this issue.

Very truly yours,

FORMAN® ASSOCIATES

Evelyn Matteucci, Chief Counsel California Gambling Control Commission May 29, 2009 Page 3

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#### Suggested Additional Language

<u>Disputes</u>. If a dispute arises between CGCC staff or the CGCC Chairperson and a Tribe concerning a state compliance review finding or any other matter involving the application or interpretation of this regulation (CGCC-8), the following procedure shall be followed:

- (1) The parties shall make good faith efforts to resolve their differences through meeting and conferring within ten (10) business days after one party gives the other party written notice setting forth in detail the existence and basis of the dispute; if these good faith discussions do not resolve the matter, then the matter shall be referred to the full CGCC for review and final decision for the CGCC, deliberations on which shall occur in executive session.
- (2) If after reviewing the matter, the full CGCC makes a final decision to which the Tribe objects, the Tribe shall be entitled to submit the dispute to arbitration, which shall be conducted in accordance with the following procedures and subject to the following understandings:
  - (a) The Tribe and the CGCC, on behalf of the State, consent to arbitration before a single arbitrator, who shall be either a retired judge having experience with gaming issues or a person having experience with internal control standards for casinos (unless the parties agree in writing to waive these requirements), and who shall conduct the arbitration in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent).
  - (b) The arbitrator shall issue a reasoned, written decision with findings of fact and conclusions of law. The arbitrator shall have jurisdiction only to issue a decision declaring whether the Tribe has substantially complied with its obligation(s) under CGCC-8 (including whether the Tribe has failed to maintain or enforce a system of internal control standards as required by this regulation) and whether the CGCC has acted within its authority to enforce the same, and (if relevant) to set a reasonable time by which the non-complying party must correct its action; the arbitrator shall have no authority to award money damages.
  - (c) The arbitrator may not decline to exercise jurisdiction or to issue a decision on the ground that a non-party to the arbitration may have an interest in or could be affected by the dispute, or for failure to join a party who could be deemed "necessary" or "indispensable" under Fed. R. Civ. Pro. 19.

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May 29, 2009

- (d) The Tribe and the CGCC each shall bear its own costs, attorneys' fees and one-half of the costs and expenses of the arbitration, unless the arbitrator rules otherwise. Section 1283.05 of the California Code of Civil Procedure shall govern discovery; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.
- (e) In mutual recognition that any dispute concerning the Tribe's compliance with CGCC-8 is specific to the parties and does not affect another Tribe's rights or obligations under CGCC-8, or impact in any way the State's relationship with any other Tribe, the Tribe and the CGCC agree not to assert as a defense the failure to join any other Tribe as a party.
- (f) The arbitrator's decision may not serve as a basis upon which the State may invoke section 11.2.1(c) of the 1999 Compact, or comparable sections of new or amended Compact, or as evidence in any proceeding under that section. Nor may the arbitrator's declaration serve as the basis for any action under the Indian Gaming Regulatory Act, 25 U.S.C. §2701, et seq., by the Tribe or the State.
- (3) If the Tribe refuses to comply with the arbitrator's decision within a reasonable time, the State shall be entitled to invoke the dispute resolution process outlined in section 9.0 of the 1999 Compact, or comparable sections of new or amended Compacts; provided, that the State shall be entitled only to seek an injunction or other appropriate equitable relief against the gaming activity conducted in violation of the 1999 Compact or new or amended Compact, but only if a third-party neutral selected by both parties first has determined that:
  - (a) the Tribe has failed to maintain or enforce a system of internal control standards as required by this regulation, and
  - (b) the Tribe failed to cure the material deficiency found by the third-party neutral in a timely manner, and either
    - (i) the Tribe's failure to maintain or enforce adequate internal control standards actually caused or created an imminent risk of a material breach of the integrity of the Tribe's Class III gaming activities, or caused or created an imminent threat to public health and safety, or
    - (ii) the Tribe's failure to maintain or enforce adequate internal control standards resulted in a failure to pay to the State any amounts due under the applicable Compact in a timely manner and the Tribe fails or refuses to make such payment after having been determined by the third-party neutral to be in default of said obligation.



### TULE RIVER TRIBE GAMING COMMISSION

"Protecting the assets of the tribe"

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May 29, 2009

Office of the Chief Counsel Attn: Evelyn Matteucci State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento Ca. 95833

Fax: 1-916-263-0452

Dear Chief Counsel Matteucci:

A letter was sent to The Tule River Tribal Chairman by the California Gambling Control Commission's Chief Counsel's Office on April 16, 2009 requesting that the Tribe submit Comments to the CGCC by May 29<sup>th</sup>, 2008 concerning CGCC proposed revisions to what is referred to as CGCC 8. This letter concerning the revised CGCC 8 raised a number of questions. Please be advised that it is the Tribe's position that the revised CGCC 8 is a new proposed regulation and should be reviewed by the Tribal/State Compact Association first before being responded to by the Tribe. Also please understand that this process of requesting comments on a regulation that has not yet been reviewed by the Association as a whole is not appropriate.

It is the Tribe's understanding that the Association would first review the proposal pursuant to the protocol previously adopted by the Tribal Regulators and the State Regulators. It is of great concern, that the California Gambling Control Commission has decided to move forward to adopt the State's most recent proposed CGCC 8 at the California Gambling Control meeting on June 19<sup>th</sup> 2008 because it begs the question as to "why does the CGCC seek the Tribe's comments, if in fact, it intends to adopt the revised regulation CGCC 8, as the CGCC has proposed it?"

Please be advised that the Tribe believes this newly proposed CGCC 8 should be submitted to the Association before the California Gambling Control Commission takes any action on the Regulation.

Should you have comments and/or questions please contact our office.

Respectfully,

Mike Williams, Chairperson, TRTGC

Teri N. Carothers, Vice Chairperson

Amy McDarment, Secretary/Treasurer

cc: Tule River Tribe Gaming Commission
Tule River Tribal Council



#### San Manuel Band of Mission Indians Tribal Gaming Commission OFFICE OF THE COMMISSIONERS

Armando T. Ramos, Chairman Julian Abarca, Gaming Commissioner Robert Balderama, Gaming Commissioner

1888 East Highland Avenue San Bernardino, CA 92404 (909) 475-1800 (909) 886-2107 Fax

P.O. Box 70 Patton, CA 92369

Re:

May 29, 2009

Evelyn Matteucci, Chief Counsel State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Comments on CGCC-8

Dear Ms. Matteucci,

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The San Manuel Band of Mission Indians ("Tribe") appreciates the opportunity to provide additional comments on CGCC-8 as revised and dated April 15, 2009. We hope that our comments prove useful to the California Gambling Control Commission ("CGCC") as it continues to reflect upon CGCC-8.

We would first like to thank the CGCC for the many positive changes included within the latest draft of CGCC-8. The Tribe especially appreciates the inclusion of the "safe-harbor" approach, which we believe accomplishes the goal of the earlier draft in establishing the NIGC MICS as a reliable industry standard for Indian gaming regulation while preserving the respective regulatory roles of both the Tribal gaming agency and the CGCC in the Compact. In doing so through revised CGCC-8, the government-to-government relationship between the Tribe and the State is also strengthened, which is mutually beneficial. It is in that context that we respectfully make the following comments about the possible adoption of the proposed regulation in its present form.

In the letter accompanying your latest version of CGCC-8, we note that the CGCC "has calendared June 19, 2009 for a public hearing where it plans to adopt CGCC-8 as a final regulation pursuant to Compact section 8.4.1(c)." No mention of the Association is made, but we assume that is an oversight. As you know, CGCC-8 in its present form was only recently circulated to the tribes. While we believe that for the most part the revised version will be much more favorably received than the last version, and agree that there should not be any undue delay in now processing it to conclusion, we do not think it is realistic to expect the Association to have endorsed it in time of for the June 19 meeting, as your letter apparently assumes. While Section 8.4 of the Compact does in fact impart to the CGCC some authority to promulgate regulations, an approval role by the Association is also required. We do not believe this needs to be a contentious issue and can be resolved quickly, but we respectfully suggest that some acknowledgment and reasonable accommodation to that process, to ensure complete understanding and acceptance of the regulation, should be pursued before it is finalized.



#### San Manuel Band of Mission Indians Tribal Gaming Commission OFFICE OF THE COMMISSIONERS

Armando T. Ramos, Chairman Julian Abarca, Gaming Commissioner Robert Balderama, Gaming Commissioner

Compact Section 8.4.1(a) states that a regulation passed by the State will not "be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association ...." (emphasis added). While there may be some belief by the State that this statement is somehow modified by the context of the Compact, we know of no credible argument to that effect. This is true even in the event of "exigent circumstances." While section 8.4.1(d) provides the only exception to the general rule that Association approval must be obtained before a regulation enacted by the State may be binding on a tribe, even here Association approval must eventually be secured. Without the Association's approval, a regulation enacted under exigent circumstances "shall cease to be effective." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so with Association approval. Without approval of the Association, the CGCC is not empowered to enact regulations that would bind the tribes.

We realize, of course, from prior comments by the State that you may have a different view. The Tribe has briefed its position in prior correspondence, however, as has the State, and see no useful purpose in going over the same ground again. Instead, we would propose that a potentially more productive approach be taken, namely providing a reasonable period of time for tribes to now fully digest the newly revised (and we contend greatly improved) CGCC-8, perhaps form a joint team to confer about it, and then set it for a vote at an Association meeting in the next couple of months. That should allow for ample time to work out any final wording and determine whether or not a working consensus on a new draft can realistically be achieved. Either way, the Association process could move forward and vote on the draft, and then at the very least the process would be preserved. Again, however, we think there is a realistic chance to reach mutual agreement if all sides are given an additional opportunity to consider the new language and the issues that are either remaining or resolved by it.

Accordingly, we respectfully request that the CGCC defer its plan to adopt CGCC-8 as a final regulation during its June 19, 2009, meeting, and bring this to the Association for a possible resolution. That would avoid unnecessary conflict over the process and would have a fair chance of success. As we have made clear in the past, the issue here is not the NIGC MICS. The Tribe has been in full compliance with the NIGC MICS since their inception. Rather, the Tribe is committed to supporting the collegial resolution of common and global regulatory concerns through the Association, as the Compact envisioned.



# San Manuel Band of Mission Indians Tribal Gaming Commission OFFICE OF THE COMMISSIONERS

Armando T. Ramos, Chairman Julian Abarca, Gaming Commissioner Robert Balderama, Gaming Commissioner

In sum, please consider deferring the CGCC-8 vote on June 19, submit it for full discussion at, and possibly further study for a reasonable period following, the next Association meeting on June 4, with the possibility of bringing it back to the Association on a timely and reasonable basis following that process.

Sincerely,

Armando T. Ramos

Gaming Commission, Chair

Julian Abarca

Gaming Commissioner

Robert Balderama

Gaming Commissioner

# 6332390\_v2



#### **BIG SANDY RANCHERIA**

May 29, 2009

Office of the Chief Counsel Attn: Evelyn Matteucci State of California

Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220

Sacramento Ca. 95833

Lisa Garcia Fax: 1-916-263-0452 Secretary

Elizabeth Kipp

Chairperson

Miles Baty Vice Chair

Treasurer

Arrow Sample Member-At-Large

Dear Chief Counsel Matteucci: Johnny Baty

> It is the Big Sandy Band of Western Mono Indians understanding that you have made a request that the Tribes submit Comments to the California Gambling Control Commission, by May 29<sup>th</sup>, 2008 concerning CGCC proposed revisions to what is referred to as CGCC 8. The letter the Tribes received concerning the revised CGCC 8 on April 16, 2009, raises a number of questions. Please be advised that it is the Tribe's position that the newly revised CGCC 8 is a newly proposed regulation and should be reviewed by the Tribal/State Compact Association first before being responded to by the Tribe. Also please understand that this process of requesting comments on a regulation that has not yet been reviewed by the Association as a whole is not appropriate.

> It is the Tribe's understanding that the Association would first review the proposal pursuant to the protocol previously adopted by the Tribal Regulators and the State Regulators. It is of great concern, that the California Gambling Control Commission has decided to move forward to adopt the State's most recent proposed CGCC 8 at the California Gambling Control meeting on June 19th 2008 because it begs the question as to "why does the CGCC" seek the Tribe's comments, if in fact, it intends to adopt the regulation CGCC 8, as the CGCC has proposed it?

> Please be advised that the Tribe believes this newly proposed CGCC 8 should be submitted to the Association before the California Gambling Control Commission takes any action on the Regulation.

Should you have comments and/or questions please contact our office.

Sincerely

Elizabeth Kipp, Chairperson Big Sandy Band of Western Mono Indians

Big Sandy Gaming Commission Cc:



## Pauma Band of Mission Indians

P.O. Box 369 • Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

Established 1893

May 26, 2009

BY FAX (916-263-0452)

Attn: Evelyn Matteucci, Chief Counsel California Gambling Control Commission 2399 Gateway Oaks, Suite 100 Sacramento, CA 95833

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Ms. Matteucci:

This Pauma Band of Mission Indians ("Tribe") and the Pauma Gaming Commission hereby jointly submit their comments regarding the California Gambling Control Commission's ("CGCC") latest version of CGCC-8, dated April 15, 2009.

As a preliminary matter, the Tribe objects to the CGCC's failure to confirm whether the Tribe's comment letter dated February 19, 2008, and the Pauma Gaming Commission's comment letter dated October 12, 2008, have been made part of the CGCC-8 record, as we had requested in the Tribe's November 2008 comment letter.

We have reviewed the proposed amendments to CGCC-8 dated April 15, 2009, and while we believe the amendments represent an improvement on the prior draft of October 1, 2008, these latest amendments do not overcome some of the Tribe's fundamental concerns about the regulation and so we continue to oppose adoption of the regulation by the CGCC.

For the reasons already set forth in our February 19, 2008, comment letter and the Association's Taskforce report, it is our position that the CGCC's attempt to adopt and enforce the NIGC's MICS, or standards equally as comprehensive and stringent, as statewide regulations is an improper attempt to amend the terms of the Tribal-State Compact in circumvention of section 12.1 of the Compact.

In addition, as we expressed in our comment letter dated October 12, 2008, it is our position that the CGCC does not have the authority to unilaterally impose CGCC-8 after it has been rejected by the Association. Since CGCC-8 was disapproved by the Association on September 4, 2008, it is our position that CGCC-8, even if re-adopted by the CGCC, will be ineffective as to the Pauma Band of Mission Indians' gaming operation.

Should the CGCC proceed with adopting CGCC-8, we ask, without prejudice to our previously stated objections, that the first sentence of section (o) be amended to read as follows: "Sections (c), (d), (e), (f), (g), (h), (i), (j), and (l) shall not apply to any Tribe's Class III gaming operation while the Tribe has a gaming ordinance or regulation in effect that provides for NIGC monitoring and enforcement of the MICS...." (underlining added to indicate amendment to current draft). The reason for this request is that the Pauma Band of Mission Indians does authorize NIGC monitoring and enforcement of the MICS but it provides for this in a gaming regulation rather than its Gaming Ordinance, i.e., section VI of Gaming Regulation No. 015, Tribal Internal Control Standards. Under section 3 of its Gaming Ordinance, the Tribe's gaming regulations have the full force of law and are deemed to be "ordinances" as that term is used in the Compact. The regulations are only inferior to the Gaming Ordinance in that the Ordinance prevails to the extent of any conflict or inconsistency between a regulation and the Ordinance.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,

Chris Devers, Chairman

Pauma Band of Mission Indians

Lenora "Dee" Cline, President Pauma Gaming Commission

c.c. Dean Shelton, Chairperson, CGCC



## Pauma Band of Mission Indians ADMINISTRATIVE OFFICE

#### **Facsimile Cover Sheet**

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Attention: Evelyn Matteucci, Chief Counsel			
Fax#: 916-263-0452			
From: Pauma Band of Missian Indians		60/	
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Subject: Comments Concerning CGCC's Re-Adoption of	Cacc	-8 <sup>5</sup>	Θ,
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May 28, 2009

OURFILE NO.

#### Via Federal Express

Evelyn M. Matteucci Chief Counsel CALIFORNIA GAMBLING CONTROL COMMISSION 2399 Gateway Oaks Drive, Suite 220 Sacramento, California 95833-4231

Re: CGCC-8

Dear Ms. Matteucci:

This letter is in response to yours of April 16, 2009, by which an amended version of CGCC-8 was provided to tribal chairpersons and copied to the Tribal State Association delegates. Your letter requested comments on the amended version of the proposed regulation by May 29, 2009. The following comments are being submitted on behalf of the Cabazon Band of Mission Indians, the Santa Ynez Band of Chumash Indians and the San Pasqual Band of Mission Indians.

First, we want to acknowledge the fact that this latest amended version of the proposed regulation is an improvement over the version that was considered by the Commission last fall. We particularly appreciate the fact that the Commission has included an "NIGC Alternative Compliance" provision in this draft, in recognition of the fact that a number of tribes have amended their trial gaming ordinances in order to re-establish the regulatory relationship with the NIGC that existed prior to the 2006 <u>CRIT</u> decision.

Having said that, we believe that the requirements of the Alternative Compliance provision must be realistic and workable in order for it to achieve its intended purpose and we have several concerns about the current draft.

Evelyn M. Matteucci Chief Counsel CALIFORNIA GAMBLING CONTROL COMMISSION May 28, 2009 Page 2

Most importantly, we are seriously troubled by the inclusion of subparts (o)(1)(A) and (B) and the corresponding provisions of (o)(2)(b) and (c). These sections require the tribe to waive confidentiality as to internal NIGC documents that are not provided to the tribe and further require the NIGC to provide such documents to the CGCC. For the following reasons, we believe these provisions are unnecessary and should be deleted.

First, it is our understanding that, to the extent such documents may be generated, the NIGC is uncertain of its legal authority to release these materials and its current policy is not to release such internal documents. Unless the CGCC has entered into a Memorandum of Understanding or reached some other accommodation with the NIGC on this issue, including such provisions in the proposed regulation would simply ensure that the Alternative Compliance section could never work as intended.

Second, the CGCC's ability to perform its regulatory functions would not be hampered or diminished by the deletion of these provisions. As described under "Concept 2" of your letter, the Alternative Compliance section of the regulation is intended to "allow the NIGC to function as the primary reviewer of internal control standards and tribal MICS" while allowing the CGCC to fulfill its Compact obligations by confirming that the NIGC is, in fact, doing its job.

The CGCC will be able to fully perform its obligations through its review of the NIGC reports and tribal responses and its ability to obtain follow-up information from the TGA. To the extent that the NIGC finds deficiencies or violations in the tribe's implementation of its MICS, that information will be identified in the reports and responses, not in the auditor's internal notes. The purpose of CGCC-8 is to determine MICS compliance, and that information will be available to the CGCC in the reports, responses and follow-up information. Therefore, the CGCC's presumed need to see internal NIGC documents, if any, would result in no significant benefit; goes beyond the scope of the Compact and the regulation; and is both superfluous and unnecessary. As a result, those provisions of amended CGCC-8 should be deleted.

As a purely editorial matter, we would also suggest that the language of (o)(1)(D) be changed to "the Tribal Gaming Agency shall make <u>appropriate personnel</u> [rather than "itself"] available..."

We also have serious concerns about the language of subsection (o)(2)(d). The inclusion of the word "comprehensive" in that provision is likely to generate unnecessary controversy as to how extensive an NIGC report need be to meet the "comprehensive" standard. In order to avoid such disputes, and in recognition of the CGCC's acknowledgment that under this provision, the NIGC is "the primary reviewer of internal control standards and Tribal MICS," we would recommend either that the word "comprehensive" be deleted or that the phrase be revised to say "a comprehensive on-site compliance review designed by the NIGC to monitor and ensure. . . ." Either of these revisions would alleviate this concern and improve this provision.

Evelyn M. Matteucci Chief Counsel CALIFORNIA GAMBLING CONTROL COMMISSION May 28, 2009 Page 3

One further issue is worthy of note here. Subsection (g)(4) of the amended regulation identifies ten specific areas of internal controls to be reviewed by CGCC staff, but then provides that "[s]hould CGCC staff determine that one or more of those areas need not be reviewed, it shall notify the Tribe and TGA in writing." This provision is useful, in that it provides the state reviewers with some flexibility to avoid unnecessary work, based on the particular facts and circumstances that they find at individual casinos. For just the same reasons, this provision should be added to subsection (o)(2)(d), in order to give NIGC staff the same flexibility in determining the appropriate scope of review required at each facility.

Finally, we would offer one comment on process. As noted above, we appreciate the improvements to the current version of the proposed regulation as opposed to the version of last fall. Nevertheless, we believe that Section 8.4.1 of the Compact, read as a whole, requires that this proposed regulation be considered and approved by the Tribal State Association before it can be adopted as a final regulation, and enforced against the tribes, by the CGCC. As a result, we would strongly encourage the CGCC to use the meeting on June 19, 2009 as a further public hearing to discuss this proposal, and the comments received on it, while the Association considers this proposed regulation in accordance with its Protocol. We would hope that the CGCC representatives will announce such a plan at the June 4<sup>th</sup> Association meeting.

Thank you for your consideration of these comments.

Sincerely,

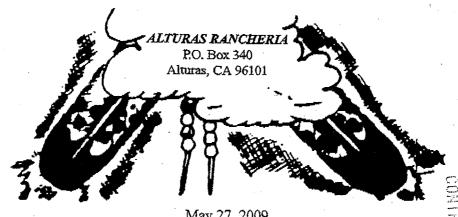
Glenn M. Feldman

For the Firm

GMF:sdt

cc: Tribal Governments
Tribal Gaming Agencies

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May 27, 2009

#### VIA FACSIMILE AND OVERNIGHT DELIVERY

Evelyn Matteucci Chief Counsel California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, California 95833-4231

> Alturas Indian Rancheria's Comments to Revised CGCC-8 - April 15, 2009 Draft Re:

Dear Ms. Matteucci:

The Alturas Indian Rancheria (the "Tribe") for the reasons discussed herein hereby opposes Revised CGCC-8 - April 15, 2009 Draft ("Revised CGCC-8") as proposed by the California Gambling Control Commission ("CGCC"). Although Revised CGCC-8 represents an improvement to the October 1, 2008 version of the regulation, Revised CGCC-8 continues to exceed the authority of the CGCC under the Tribe's 1999 Tribal-State Gaming Compact ("Compact") and it is unnecessary, unduly burdensome, and unfairly discriminatory. In addition, Revised CGCC-8 provides an unreasonable and unworkable NIGC Alternative Compliance procedure that the Tribe cannot support.

#### I. **NEW REGULATION**

Revised CGCC-8 represents a substantially new regulation that must be submitted to the California Tribal-State Regulators Association ("Association") for consideration. Unlike the previous version of CGCC-8,1 Revised CGCC-8 includes a Safe Harbor plan, an NIGC Alternative Compliance procedure, and a detailed procedure for comprehensive CGCC on-site compliance reviews (audits). In fact, the CGCC admits that it "undertook substantial revisions to the previous version of CGCC-8."2

The Association's protocol3 ("Protocol") provides the procedure by which the State Gaming Agency submits proposed regulatory standards to the Association for its consideration and approval or disapproval in compliance with Section 8.4.1 of the Tribe's Compact. The

October 1, 2008 version of CGCC-8 adopted by the CGCC on October 14, 2008.

<sup>&</sup>lt;sup>2</sup> April 16, 2009 Evelyn Matteucci letter, page 2.

<sup>&</sup>lt;sup>3</sup> Protocol for Submission of Proposed State Regulatory Standards to the Association (Amended January 21, 2004).

Protocol serves important due process considerations by: (i) providing a procedure for the State Gaming Agency to give notice to the Association of a proposed regulatory standard; (ii) providing an opportunity for state and tribal Association members to discuss the proposed standard and to consider oral and/or written comments; and (iii) requiring an Association vote to approve or disapprove the proposed regulation.

The most important components of Revised CGCC-8 consist of the Safe Harbor plan, the NIGC Alternative Compliance procedure, and the detailed comprehensive CGCC on-site compliance review (audit) procedure. Because these provisions have not been previously considered by the Association as a whole, Section 8.4.1, the Protocol, and due process considerations require the CGCC to submit Revised CGCC-8 to the Association as a new regulation.

#### II. ASSOCIATION APPROVAL

Subdivision (a) of Section 8.4.1 of the Tribe's Compact does not authorize the CGCC to unilaterally promulgate Revised CGCC-8 or any other version of CGCC-8 without the Association's approval. Although the CGCC believes that subdivision (c) to Section 8.4.1 provides such authority, subdivision (c) simply implements the second requirement in subdivision (a) that provides tribes an opportunity to comment on proposed regulations approved or disapproved by the Association. Subdivision (c) does not, in itself or in combination with subdivision (b) override the specific requirement for Association approval set forth in subdivision (a).

#### III. NIGC ALTERNATIVE COMPLIANCE

In concept, the Tribe supports a reasonable NIGC exemption procedure for those tribes that adopt the NIGC MICS and authorize the NIGC to monitor and enforce the NIGC MICS. However, the NIGC Alternative Compliance procedure set forth in Section (o) of Revised CGCC-8 does not represent a reasonable exemption procedure. Section (o)'s requirements are unduly burdensome and appear to constitute a procedure for the CGCC to audit NIGC MICS compliance reviews.

For example, the NIGC Alternative Compliance procedure requires participating tribes to waive confidentiality regarding any NIGC prepared supporting reports or documents<sup>4</sup> and for the NIGC, itself, to submit said documents to the CGCC. However, it is unclear whether such a waiver would authorize the NIGC to disclose the requested supporting records or documents to the CGCC. In addition, the requirements of Section (o) would not be binding upon the NIGC. The NIGC could simply choose to ignore tribal waivers of confidentiality and any purported requirement for the NIGC to disclose its supporting reports or documents to the CGCC.

In addition, Section (o) does not adequately define the term NIGC prepared "supporting reports or documents." The NIGC performs a variety of regulatory functions and services separate and apart from MICS compliance reviews, financial auditing related to NIGC regulatory fees, and background licensing review. For example, the NIGC reviews and approves tribal

Except for financial audits involving NIGC regulatory fees and NIGC licensing background files.



gaming ordinances, gaming management contracts and tribal gaming facility licenses. The NIGC also may perform financial audits unrelated to tribal payment of NIGC regulatory fees. In addition, the NIGC makes certain Indian lands determinations for gaming purposes and enforces tribal revenue allocation plans under certain circumstances. Seemingly, any NIGC supporting report or document related to these subjects may be discoverable by the CGCC due to the broad waiver required by Section (o). Such a broad waiver of confidentiality is not reasonable or beneficial for tribes.

The NIGC Compliance procedure unreasonably provides no cure period for circumstances in which the NIGC may inadvertently or otherwise without fault of a tribe fails to perform a requirement set forth in Section (o) of Revised CGCC-8. Given that tribal compliance with the NIGC Alternative Compliance procedure would, in large part, be subject to NIGC compliance with the requirements of Section (o), a reasonable cure provision should be included in Section (o) to cover the inadvertent omissions of the NIGC. For example, federal regulations provide tribes a cure period regarding MICS compliance issues. <sup>5</sup>

Further, the NIGC Alternative Compliance procedure does not provide sufficient discretion to the NIGC to perform MICS compliance reviews. Despite the fact that the NIGC has more regulatory experience and expertise than the CGCC, Section (o) does not allow the NIGC to make an independent determination that one (1) or more subject areas of a tribe's gaming operation need not be reviewed for purposes of MICS compliance. In contrast, the CGCC grants unto itself such discretion in Section (g)(4) of Revised CGCC-8 regarding CGCC compliance reviews/audits of those tribes that do not participate in the NIGC Alternative Compliance procedure.

#### IV. REVISED CGCC-8 EXCEEDS THE STATE GAMING AGENCY'S AUTHORITY

Section (g) of Revised CGCC-8 includes a procedure for detailed and comprehensive CGCC on-site compliance reviews. However, Section 7.1 of the Tribe's Compact states that the Tribe and not the CGCC is the on-site regulator of the Tribe's gaming operation. In addition, Section 7.4 of the Tribe's Compact grants the CGCC limited, secondary inspection rights. The CGCC may inspect/observe the Tribe's Class III Gaming Activities, copy the books, papers, and records of the Tribe's gaming operation, and review such materials off-site where such access is reasonably necessary to ensure compliance with the Compact. The plain language of the Tribe's Compact does not authorize the CGCC to perform a comprehensive on-site audit of the Tribe's gaming operation.

To the extent that the CGCC seeks to displace the Tribe as the primary regulator of its gaming operation and seeks to unilaterally acquire greater regulatory authority for itself than what is authorized by the Tribe's Compact, such action constitutes an amendment of the Tribe's Compact,

## V. REVISED CGCC-8 IS UNNECESSARY, UNDULY BURDENSOME, AND UNFAIRLY DISCRIMINATORY

<sup>&</sup>lt;sup>5</sup> 25 C.F.R. § 542.3(g)(2).

Although not required by law, the Tribe increased the regulatory oversight of its gaming operation by amending its gaming ordinance to include the NIGC MICS, and to grant the NIGC authority to monitor and enforce said MICS.<sup>6</sup> As part of this amendment, the Tribe agreed to conduct annual "Agreed-Upon Procedures" audits, i.e., comprehensive on-site compliance audits. Under this structure, the Tribe serves as the on-site primary regulator and the NIGC monitors and enforces the Tribe's compliance with the NIGC MICS.

However, Section (g) of Revised CGCC-8 purports to authorize the CGCC to conduct its own comprehensive on-site compliance reviews/audits of the Tribe's gaming operation. Therefore, the Tribe's gaming operation would be subject to multiple comprehensive on-site compliance audits by the Tribal Gaming Commission, NIGC, and CGCC. Thus, the requirement for a third regulatory agency comprehensive on-site audit by the CGCC is unnecessary, unduly burdensome, and unfairly discriminatory.

Even though Section (o) of Revised CGCC-8 purports to allow an alternative compliance procedure for the Tribe to avoid the CGCC's comprehensive on-site compliance reviews/audits, the NIGC Alternative Procedure, as discussed above, offers no real exemption procedure because the provisions of Section (o) are inherently unreasonable and unworkable.

#### VI. RESERVATION OF RIGHTS

These comments are summary in nature and are not exclusive. Any point or argument not made herein is not waived.

#### VII. CONCLUSION

For the reasons provided above, the Alturas Indian Rancheria opposes Revised CGCC-8 and respectfully requests the CGCC to submit Revised CGCC-8 to the Association for its consideration as a new regulation, or simply not promulgate the proposed regulation.

Sincerely,

Alturas Indian Rancheria

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Phillip Del Rosa Chairman

cc: The Alturas Tribal Council
The Alturas Tribal Gaming Commission

<sup>&</sup>lt;sup>6</sup> See the NIGC website regarding the June 4, 2008 NIGC letter by Chairman Phillip Hogen approving said amendment.



### Paskenta Band of Nomlaki Indians

P.O. Box 398 Orland, CA 95963

Phone: (530) 865-2010 Fax: (530) 865-1870

May 26, 2009

#### VIA FACSIMILE AND OVERNIGHT DELIVERY

Evelyn Matteucci Chief Counsel California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, California 95833-4231

Re: Paskenta Band of Nomlaki Indians' Comments to Revised CGCC-8 – April 15, 2009 Draft

Dear Ms. Matteucci:

The Paskenta Band of Nomlaki Indians (the "Tribe") for the reasons discussed herein hereby opposes Revised CGCC-8 — April 15, 2009 Draft ("Revised CGCC-8") as proposed by the California Gambling Control Commission ("CGCC"). Although Revised CGCC-8 represents an improvement to the October 1, 2008 version of the regulation, Revised CGCC-8 continues to exceed the authority of the CGCC under the Tribe's 1999 Tribal-State Gaming Compact ("Compact") and it is unnecessary, unduly burdensome, and unfairly discriminatory. In addition, Revised CGCC-8 provides an unreasonable and unworkable NIGC Alternative Compliance procedure that the Tribe cannot support.

#### I. NEW REGULATION

Revised CGCC-8 represents a substantially new regulation that must be submitted to the California Tribal-State Regulators Association ("Association") for consideration. Unlike the previous version of CGCC-8, Revised CGCC-8 includes a Safe Harbor plan, an NIGC Alternative Compliance procedure, and a detailed procedure for comprehensive CGCC on-site compliance reviews (audits). In fact, the CGCC admits that it "undertook substantial revisions to the previous version of CGCC-8."<sup>2</sup>

The Association's protocol<sup>3</sup> ("Protocol") provides the procedure by which the State Gaming Agency submits proposed regulatory standards to the Association for its consideration and approval or disapproval in compliance with Section 8.4.1 of the Tribe's Compact. The Protocol serves important due process considerations by: (i) providing a procedure for the State

<sup>&</sup>lt;sup>1</sup> October 1, 2008 version of CGCC-8 adopted by the CGCC on October 14, 2008.

<sup>&</sup>lt;sup>2</sup> April 16, 2009 Evelyn Matteucci letter, page 2.

<sup>&</sup>lt;sup>3</sup> Protocol for Submission of Proposed State Regulatory Standards to the Association (Amended January 21, 2004).

Gaming Agency to give notice to the Association of a proposed regulatory standard; (ii) providing an opportunity for state and tribal Association members to discuss the proposed standard and to consider oral and/or written comments; and (iii) requiring an Association vote to approve or disapprove the proposed regulation.

The most important components of Revised CGCC-8 consist of the Safe Harbor plan, the NIGC Alternative Compliance procedure, and the detailed comprehensive CGCC on-site compliance review (audit) procedure. Because these provisions have not been previously considered by the Association as a whole, Section 8.4.1, the Protocol, and due process considerations require the CGCC to submit Revised CGCC-8 to the Association as a new regulation.

#### II. ASSOCIATION APPROVAL

Subdivision (a) of Section 8.4.1 of the Tribe's Compact does not authorize the CGCC to unilaterally promulgate Revised CGCC-8 or any other version of CGCC-8 without the Association's approval. Although the CGCC believes that subdivision (c) to Section 8.4.1 provides such authority, subdivision (c) simply implements the second requirement in subdivision (a) that provides tribes an opportunity to comment on proposed regulations approved or disapproved by the Association. Subdivision (c) does not, in itself or in combination with subdivision (b) override the specific requirement for Association approval set forth in subdivision (a).

#### III. NIGC ALTERNATIVE COMPLIANCE

In concept, the Tribe supports a reasonable NIGC exemption procedure for those tribes that adopt the NIGC MICS and authorize the NIGC to monitor and enforce the NIGC MICS. However, the NIGC Alternative Compliance procedure set forth in Section (o) of Revised CGCC-8 does not represent a reasonable exemption procedure. Section (o)'s requirements are unduly burdensome and appear to constitute a procedure for the CGCC to audit NIGC MICS compliance reviews.

For example, the NIGC Alternative Compliance procedure requires participating tribes to waive confidentiality regarding any NIGC prepared supporting reports or documents<sup>4</sup> and for the NIGC, itself, to submit said documents to the CGCC. However, it is unclear whether such a waiver would authorize the NIGC to disclose the requested supporting records or documents to the CGCC. In addition, the requirements of Section (o) would not be binding upon the NIGC. The NIGC could simply choose to ignore tribal waivers of confidentiality and any purported requirement for the NIGC to disclose its supporting reports or documents to the CGCC.

In addition, Section (o) does not adequately define the term NIGC prepared "supporting reports or documents." The NIGC performs a variety of regulatory functions and services separate and apart from MICS compliance reviews, financial auditing related to NIGC regulatory fees, and background licensing review. For example, the NIGC reviews and approves tribal gaming ordinances, gaming management contracts and tribal gaming facility licenses. The

<sup>&</sup>lt;sup>4</sup> Except for financial audits involving NIGC regulatory fees and NIGC licensing background files.

NIGC also may perform financial audits unrelated to tribal payment of NIGC regulatory fees. In addition, the NIGC makes certain Indian lands determinations for gaming purposes and enforces tribal revenue allocation plans under certain circumstances. Seemingly, any NIGC supporting report or document related to these subjects may be discoverable by the CGCC due to the broad waiver required by Section (o). Such a broad waiver of confidentiality is not reasonable or beneficial for tribes.

The NIGC Compliance procedure unreasonably provides no cure period for circumstances in which the NIGC may inadvertently or otherwise without fault of a tribe fails to perform a requirement set forth in Section (o) of Revised CGCC-8. Given that tribal compliance with the NIGC Alternative Compliance procedure would, in large part, be subject to NIGC compliance with the requirements of Section (o), a reasonable cure provision should be included in Section (o) to cover the inadvertent omissions of the NIGC. For example, federal regulations provide tribes a cure period regarding MICS compliance issues.<sup>5</sup>

Further, the NIGC Alternative Compliance procedure does not provide sufficient discretion to the NIGC to perform MICS compliance reviews. Despite the fact that the NIGC has more regulatory experience and expertise than the CGCC, Section (o) does not allow the NIGC to make an independent determination that one (1) or more subject areas of a tribe's gaming operation need not be reviewed for purposes of MICS compliance. In contrast, the CGCC grants unto itself such discretion in Section (g)(4) of Revised CGCC-8 regarding CGCC compliance reviews/audits of those tribes that do not participate in the NIGC Alternative Compliance procedure.

#### IV. REVISED CGCC-8 EXCEEDS THE STATE GAMING AGENCY'S AUTHORITY

Section (g) of Revised CGCC-8 includes a procedure for detailed and comprehensive CGCC on-site compliance reviews. However, Section 7.1 of the Tribe's Compact states that the Tribe and not the CGCC is the on-site regulator of the Tribe's gaming operation. In addition, Section 7.4 of the Tribe's Compact grants the CGCC limited, secondary inspection rights. The CGCC may inspect/observe the Tribe's Class III Gaming Activities, copy the books, papers, and records of the Tribe's gaming operation, and review such materials off-site where such access is reasonably necessary to ensure compliance with the Compact. The plain language of the Tribe's Compact does not authorize the CGCC to perform a comprehensive on-site audit of the Tribe's gaming operation.

To the extent that the CGCC seeks to displace the Tribe as the primary regulator of its gaming operation and seeks to unilaterally acquire greater regulatory authority for itself than what is authorized by the Tribe's Compact, such action constitutes an amendment of the Tribe's Compact.

# V. REVISED CGCC-8 IS UNNECESSARY, UNDULY BURDENSOME, AND UNFAIRLY DISCRIMINATORY

<sup>&</sup>lt;sup>5</sup> 25 C.F.R. § 542.3(g)(2).

Although not required by law, the Tribe increased the regulatory oversight of its gaming operation by amending its gaming ordinance to include the NIGC MICS, <sup>6</sup> and to grant the NIGC authority to monitor and enforce said MICS. <sup>7</sup> As part of this amendment, the Tribe agreed to conduct annual "Agreed-Upon Procedures" audits, i.e., comprehensive on-site compliance audits and to submit the results of such audits to the NIGC. Under this structure, the Tribe serves as the on-site primary regulator and the NIGC monitors and enforces the Tribe's compliance with the NIGC MICS.

However, Section (g) of Revised CGCC-8 purports to authorize the CGCC to conduct its own comprehensive on-site compliance reviews/audits of the Tribe's gaming operation. Therefore, the Tribe's gaming operation would be subject to multiple comprehensive on-site compliance audits by the Tribal Gaming Commission, NIGC, and CGCC. Thus, the requirement for a third regulatory agency comprehensive on-site audit by the CGCC is unnecessary, unduly burdensome, and unfairly discriminatory.

Even though Section (o) of Revised CGCC-8 purports to allow an alternative compliance procedure for the Tribe to avoid the CGCC's comprehensive on-site compliance reviews/audits, the NIGC Alternative Procedure, as discussed above, offers no real exemption procedure because the provisions of Section (o) are inherently unreasonable and unworkable.

#### VI. RESERVATION OF RIGHTS

These comments are summary in nature and are not exclusive. Any point or argument not made herein is not waived.

#### VII. CONCLUSION

For the reasons provided above, the Paskenta Band of Nomlaki Indians opposes Revised CGCC-8 and respectfully requests the CGCC to submit Revised CGCC-8 to the Association for its consideration as a new regulation, or simply not promulgate the proposed regulation.

Sincerely,

Paskenta Band of Nomlaki Indians

Everett Freeman

Everett Freeman

Chairman

The Paskenta Tribal Council

cc:

The Paskenta Tribal Gaming Commission

<sup>&</sup>lt;sup>6</sup> Prior to the opening of the Rolling Hills Casino, the Paskenta Tribal Gaming Commission adopted by regulation the NIGC MICS.

<sup>&</sup>lt;sup>7</sup> See the NIGC website regarding the May 13, 2008 NIGC letter by Chairman Phillip Hogen approving said amendment.

# Hillen

### Picayune Rancheria of the

#### CHUKCHANSI INDIANS

46575 Road 417 · Coarsegold, CA 93614 · (559) 683-6633 · FAX (559) 683-0599

May 26, 2009

VIA FACSIMILE (916) 263-0499 & U.S. MAIL California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, 95833-4231 Attn: Chairman Dean Shelton

Re: Amended Version of CGCC-8 (Minimum Internal Control Standards)

#### Dear Chairman Shelton:

The Picayune Rancheria of the Chukchansi Indians ("Tribe") provides the following responses to the California Gambling Control Commission's ("CGCC") notice of a "Final Uniform Tribal Gaming Regulation, CGCC-8 (Minimum Internal Control Standards) ("CGCC-8") dated April 16, 2009.

The Tribe is greatly concerned that the CGCC has decided to adopt CGCC-8 as a "final" rule despite overwhelming opposition and disapproval by the Tribal-State Association. Moreover, what is most disturbing, is the complete disregard of the agreed upon association approval process provided for in the Tribal-State Compact between the Tribe and the State of California ("Compact"). The CGCC's disregard of the Tribal-State Association process contained in the Compact is nothing short of sheer disrespect of the Tribe's sovereignty and as an equal governmental party to the Compact.

Upon review of the above referenced notice, the Tribe has several questions that need to be answered before any meaningful substantive comments can be produced. Specifically,

- 1) Does the CGCC, intend on submitting the "Amended Version of CGCC-8" to the Tribal-State Association for possible approval?
- 2) If so, what is the CGCC's prerogative with regard to Association's treatment of the proposed amended version of CGCC-8?
  - a. Does the CGCC consider the amended version of CGCC-8 a mere modified version of the original version of CGCC-8 which would be immediately ripe for a vote by the Tribal-State Association?

- b. Does the CGCC consider the amended version of CGCC-8 a substantially modified proposed regulation that is better served by presenting it to the Tribal-State Association as an "initial draft" and thus warranting Tribal-State Association review in the form of a Task Force?
- c. Does the CGCC consider the amended version of CGCC-8 an entirely new proposed regulation warranting treatment as such by the Tribal-State Association under the agreed upon Protocol For Submission of Proposed State Regulatory Standards to the Association as amended January 21, 2004? (see enclosure)
- 3) If on the other hand the CGCC does not intend to submit the amended version of CGCC-8 to the Tribal-State Association, please provide written affirmation of such determination to the Tribe as soon as possible.

Despite the uncertainty created by the April 16, 2009 notice, the Tribe offers the following comments for consideration:

- 1) Although it appears the CGCC has incorporated some of the tribally suggested revisions to CGCC-8, such as the "NIGC ALTERNATIVE COMPLIANCE" provision, CGCC-8, in its entirety, remains an expansion of the State's regulatory role over the Tribe's gaming activities tantamount to a unilateral Compact amendment. The unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS, which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact, is troublesome.
- 2) The Tribe further finds that the amended version of CGCC-8 remains entirely unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Tribe's Gaming Ordinance which unequivocally provides for National Indian Gaming Commission oversight and enforcement of the federal Minimum Internal Control Standards issued by the NIGC (25 CFR 542). Furthermore, the Ordinance is entirely consistent with the agreed upon duties and authority granted to the Gaming Commission pursuant to Compact Section 8.1.

The Tribe therefore vehemently opposes your adoption of CGCC-8 as a final rule. We respectfully urge the CGCC, to consider the above before advancing with the imposition of CGCC-8 as a "final regulation" upon the Tribe. Additionally, in order to have some meaningful dialog with the CGCC prior to the close of the comment period on CGCC-8, the Tribe respectfully requests the CGCC extend the comment period an additional thirty (30) days or at least until a date following the next Tribal-State Association meeting which is scheduled for June 4, 2009, at Pechanga Resort and Casino.

Page 3 of 3 May 26, 2009

The Tribe certainly hopes you reconsider your position and that the State immediately change course and address the MICS issue in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,

Morris Reid, Sr., Chairman

Picayune Rancheria of the Chukchansi Indians

Mark Emerick, Secretary

Picayune Rancheria of the Chukchansi Indians

cc: Tribal Gaming Commission

Philip Hogen, Chairman, National Indian Gaming Commission

Jerry Brown, Attorney General, State of California

Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control

Rosette & Associates, PC



#### SUSANVILLE INDIAN RANCHERIA GAMING COMMISSION

May 19, 2009

VIA FACSIMILE (916) 263-0499 & U.S. MAIL California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, 95833-4231 Attn: Chairman Dean Shelton

Re: Amended Version of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Susanville Indian Rancheria ("Tribe") provides the following responses to the California Gambling Control Commission's ("CGCC") notice of a "Final Uniform Tribal Gaming Regulation, CGCC-8 (Minimum Internal Control Standards) ("CGCC-8") dated April 16, 2009.

As you are well aware, the Tribe has incorporated the National Indian Gaming Commission ("NIGC") Minimum Internal Control Standards ("MICS") as part of the Tribe's effective regulatory system. Additionally, the Tribe presently is considering amending its Tribal Gaming Ordinance ("Ordinance") to provide for enumerated NIGC oversight and enforcement of our MICS. We are certainly appreciative that the revised proposed CGCC-8 regulation provides some regulatory alternatives for tribes who have incorporated NIGC MICS jurisdiction in their respective tribal gaming ordinances. The recent revision indicates that the CGCC is finally beginning to consider the tribal perspective and tribal concerns with the substantive provisions contained in the proposed regulation. However, despite the inclusion of certain tribally proposed alternatives, we remain greatly concerned that the CGCC has decided to adopt CGCC-8 as a "final" rule despite overwhelming opposition and disapproval by the Tribal-State Association. Moreover, what is most disturbing is the apparent disregard of the agreed upon Tribal-State Association approval requirement provided for in the Tribal-State Compact between the Tribe and the State of California ("Compact"). The CGCC's disregard of the Tribal-State Association process contained in the Compact is nothing short of sheer disrespect of the Tribe's sovereignty and as an equal governmental party to the Compact.

Upon review of the above referenced notice, the Tribe has several remaining questions that need to be answered before any meaningful substantive comments can be produced.



#### Specifically,

- 1) Does the CGCC intend on submitting the "Amended Version of CGCC-8" to the Tribal-State Association for approval?
- 2) If so, what is the CGCC's prerogative with regard to Tribal-State Association's treatment of the proposed amended version of CGCC-8?
  - a. Does the CGCC consider the amended version of CGCC-8 a mere modified version of the original version of CGCC-8 which would be immediately ripe for a vote by the Tribal-State Association?
  - b. Does the CGCC consider the amended version of CGCC-8 a substantially modified proposed regulation that is better served by presenting it to the Tribal-State Association as an "initial draft" and thus warranting Tribal-State Association review in the form of a Task Force?
  - c. Does the CGCC consider the amended version of CGCC-8 an entirely new proposed regulation warranting treatment as such by the Tribal-State Association under the agreed upon Protocol For Submission of Proposed State Regulatory Standards to the Association as amended January 21, 2004? (see enclosure)
- 3) If on the other and the CGCC does not intend to submit the amended version of CGCC-8 to the Tribal-State Association, please provide such a written affirmation to the Tribe as soon as possible.

Although it appears the CGCC has incorporated some of the tribally suggested revisions in to the amended version of CGCC-8, such as the "NIGC ALTERNATIVE COMPLIANCE" provision, CGCC-8, in its entirety, remains an expansion of the State's regulatory role over the Tribe's gaming activities tantamount to a unilateral Compact amendment. The unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS, which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact, is troublesome.

The Tribe further finds that the amended version of CGCC-8 remains entirely unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Tribe's Gaming Ordinance which already unequivocally establish effective MICS. Furthermore, the Ordinance is entirely consistent with the agreed upon duties and authority granted to the Tribe's Gaming Commission pursuant to Compact Section 8.1.

The Tribe therefore vehemently opposes your adoption of CGCC-8 as a "final" rule. We respectfully urge the CGCC, to consider the above before advancing with the imposition of CGCC-8 as a "final regulation" upon the Tribe. Additionally, in order to have some meaningful dialog with the CGCC prior to the close of the comment period on CGCC-8,

the Tribe respectfully requests the CGCC cancel its announced June 19, 2009, public hearing on CGCC-8 so that meaningful discussion on MICS can be facilitated on a government-to-government basis. Alternatively, at a minimum, the CGCC should extend the current comment period an additional thirty (30) days or at least until a date following the next Tribal-State Association meeting which is scheduled for June 4, 2009, at Pechanga Resort and Casino.

The Tribe certainly hopes you reconsider your position and that the State immediately change course and address the MICS issue in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,

Ginny Morales, Chairperson

Susanville Indian Rancheria Gaming Commission

Cc: Tribal Business Council
Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control
Rosette & Associates, PC



### TUOLUMNE ME-WUK TRIBAL COUNCIL

Post Office Box 699 TUOLUMNE, CALIFORNIA 95379

Telephone (209) 928-5300

Fax (209) 928-1677

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VIA FACSIMILE (916) 263-0499 & U.S. MAIL California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, 95833-4231 Attn: Chairman Dean Shelton

Re: Amended Version of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Tuolumne Band of Me-Wuk Indians ("Tribe") provides the following responses to the California Gambling Control Commission's ("CGCC") notice of a "Final Uniform Tribal Gaming Regulation, CGCC-8 (Minimum Internal Control Standards) ("CGCC-8") dated April 16, 2009.

As you are well aware, the Tribe has incorporated the National Indian Gaming Commission ("NIGC") Minimum Internal Control Standards ("MICS") as part of the Tribe's effective regulatory system wherein the Tribal Gamin Agency is the primary regulator of gaming activities within the Tribe's jurisdiction. Additionally, it should be noted, the Tribe presently is evaluating and considering amending its Tribal Gaming Ordinance ("Ordinance") to provide for enumerated NIGC oversight and enforcement of our MICS. The Tribe is certainly appreciative that the revised proposed CGCC-8 regulation provides some regulatory alternatives for tribes that have incorporated NIGC MICS jurisdiction in their respective tribal gaming ordinances. The recent revision indicates that the CGCC is finally beginning to consider some of the tribal perspective and tribal concerns pertaining to the substantive provisions contained in the proposed regulation. However, despite the inclusion of certain tribally proposed alternatives, the Tribe remains greatly concerned that the CGCC has decided to adopt CGCC-8 as a "final" rule despite overwhelming opposition and disapproval by the Tribal-State Association. Moreover, what is most disappointing and frustrating is the apparent disregard of the agreed upon Tribal-State Association approval requirements provided for in the Tribal-State Compact between the Tribe and the State of California ("Compact"). The CGCC's apparent intent to disregard and circumvent the Tribal-State Association process provided for in the Compact will not be ignored.

Upon review of the above referenced notice, the Tribe has several remaining questions that need to be answered before any meaningful substantive comments can be produced.

#### Specifically,

- 1) Does the CGCC intend on submitting the "Amended Version of CGCC-8" to the Tribal-State Association for approval?
- 2) If so, what is the CGCC's prerogative with regard to Tribal-State Association's treatment of the proposed amended version of CGCC-8?
  - a. Does the CGCC consider the amended version of CGCC-8 a mere modified version of the original version of CGCC-8 which would be immediately ripe for a vote by the Tribal-State Association?
  - b. Does the CGCC consider the amended version of CGCC-8 a substantially modified proposed regulation that is better served by presenting it to the Tribal-State Association as an "initial draft" and thus warranting Tribal-State Association review in the form of a Task Force?
  - c. Does the CGCC consider the amended version of CGCC-8 an entirely new proposed regulation warranting treatment as such by the Tribal-State Association under the agreed upon Protocol For Submission of Proposed State Regulatory Standards to the Association as amended January 21, 2004? (see enclosure)
- 3) If on the other and the CGCC does not intend to submit the amended version of CGCC-8 to the Tribal-State Association, please provide such a written affirmation to the Tribe as soon as possible.

Although it appears the CGCC has incorporated some of the tribally suggested revisions in to the amended version of CGCC-8, such as the "NIGC ALTERNATIVE COMPLIANCE" provision, CGCC-8, in its entirety, remains an expansion of the State's regulatory role over the Tribe's gaming activities tantamount to a unilateral Compact amendment. The unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS, which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact, is troublesome.

The Tribe further finds that the amended version of CGCC-8 remains entirely unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Tribe's Gaming Ordinance which already unequivocally establish effective MICS. Furthermore, the Ordinance is entirely consistent with the agreed upon duties and authority granted to the Tribe's Gaming Commission pursuant to Compact Section 8.1.

The Tribe therefore vehemently opposes your adoption of CGCC-8 as a "final" rule. We respectfully urge the CGCC, to consider the above before advancing with the imposition of CGCC-8 as a "final regulation" upon the Tribe. Additionally, in order to have some meaningful dialog with the CGCC prior to the close of the comment period on CGCC-8,

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the Tribe respectfully requests the CGCC cancel its announced June 19, 2009, public hearing on CGCC-8 so that meaningful discussion of MICS can be facilitated on a government-to-government basis. Alternatively, at a minimum, the CGCC should extend the current comment period an additional thirty (30) days or at least until a date following the next Tribal-State Association meeting which is scheduled for June 4, 2009, at Pechanga Resort and Casino.

The Tribe certainly hopes you reconsider your position and that the State immediately change course and address the MICS issue in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,

Kevin Day, Chairman

Tuolumne Band of Me-Wuk Indians

cc: Tribal Gaming Agency

Philip Hogen, Chairman, National Indian Gaming Commission Jerry Brown, Attorney General, State of California Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control

Rosette & Associates, PC

Exhibit B17



# MOORETOWN RANCHERIA GAMING COMMISSION

#1 Alverda Drive, Oroville, CA 95966 Phone: (530) 533-3885 ext. 336 Fax: (530) 533-3653

April 27, 2009

Evelyn Matteucci, Chief Counsel State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Re: CGCC-8

Dear Ms. Matteucci.

The Mooretown Rancheria Gaming Commission renews the comments and objections to CGCC-8 as stated in our last objection letter dated November 13, 2008.

Please see attached letter and objections.

Sincerely,

Steve Wilson

Chairman, Mooretown Gaming Commission



# MOORETOWN RANCHERIA GAMING COMMISSION

#1 Alverda Drive, Oroville, CA 95966 Phone: (530) 533-3885 ext. 336 Fax: (530) 533-3653



November 13, 2008

Evelyn Matteucci, Chief Counsel State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Re: Comments on CGCC-8 as adopted on October 14, 2008

Dear Ms. Matteucci:

The Mooretown Rancheria ("Tribe") respectfully submits comments opposing passage of CGCC-8 following the California Gambling Control Commission's ("Commission") approval thereof on October 14, 2008. We recognize the importance of internal control standards to the integrity of tribal gaming, and work hard to make sure our gaming operation fully complies with industry standard controls. We nonetheless oppose the Commission's promulgation of CGCC-8 because it purports to usurp the Tribe's right and duty under the Compact to promulgate the regulations that control the casino operational standards addressed in the MICS. The Commission cannot dictate any standards that are not set in the Compact without approval of the Tribal-State Association ("Association"). Absent Association approval the State's regulations cannot "be effective with respect to the Tribe's Gaming Operation." Compact section 8.4.1(a). Accordingly, we propose that the Commission work cooperatively with the Association to find alternative ways of reaching its stated goals without exceeding its jurisdiction and violating the Tribe's rights under its Compact.

Our opposition to CGCC-8 is based in federal law, which provides that states can only regulate class III gaming to the extent agreed to by tribes, and in section 8.4.1(a) of our Compact which provides that State regulations affecting tribal gaming are only effective if approved by the Association. Because compliance with the particular standards found in CGCC-8 is not required under the Compact, tribes are not currently bound by those standards. If the Commission wishes to impose such compliance through regulation it must obtain Association approval. When, as here, the Association disapproves a regulation, that regulation cannot be binding on the Tribe.

<sup>&</sup>lt;sup>1</sup> Indeed, even section 8.4.1(d) of the Compact, which addresses the state's regulatory power under exigent circumstances, provides that regulations adopted under such circumstances become ineffective if not subsequently approved by the Association. Thus, under the Compact, the state is not entitled to unilaterally regulate tribes. Association approval is always required.

Mooretown Rancheria Comments on CGCC-8 November 13, 2008 Page 2 of 5

The Commission's stated intention to pass CGCC-8 now, without Association approval, would violate the Compact and IGRA. Accordingly, if the Commission proceeds with CGCC-8 tribes will be forced to litigate the matter in order to preclude the state from unlawfully regulating class III gaming and to establish that tribes are not subject to mandatory regulation by the Commission absent Association approval.

In its Detailed Response, as in previous letters and publications issued in connection with CGCC-8, the Commission asserts that its authority to promulgate CGCC-8 – even without Association approval – stems from sections 7.4, 7.4.4, 8.4, and 8.4.1 of the Compact. Detailed Response at 13. But the Commission completely ignores section 8.4.1(a)'s provision that no State regulation can be binding unless first approved by the Association. For reasons explained below we respectfully disagree with the Commission's assertions. Most of the sections the Commission cites do not grant the Commission any regulatory power. Instead, they authorize the State to ascertain whether the tribal gaming operation complies with tribal regulations and with the Compact.<sup>2</sup> And section 8.4.1, which does grant the Commission limited regulatory power, explicitly provides that any regulations promulgated pursuant thereto will only be effective if approved by the Association. See section 8.4.1(a). Absent such approval no binding regulation may be enacted.

Congressional intent regarding tribal gaming is very clear. The Indian Gaming Regulatory Act only permits a state to regulate tribal gaming operations to the extert agreed by the tribe in a Tribal-State Compact. 25 U.S.C. § 2710(d)(3)(C). The question here is whether the existing Tribal-State Compacts authorize the Commission to pass CGCC-8 without Association approval. They do not.

In its Detailed Response at 4, 5, 13, and 15 and in other related publications the Commission cites Compact Sections 6, 7 and 8 as sources of authority for CGCC-8. And while the Commission never even mentions the provision of section 8.4.1(a) that no State regulation "shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association," its comments imply that the regulatory authority it claims exists in the Compact may be exercised even absent the requisite Association approval. We respectfully disagree with these arguments because Sections 6, 7 and 8 do not authorize the Commission to regulate tribes absent Association approval. Here, the Association did not approve – and in fact explicitly disapproved – CGCC-8. Consequently, the State lacks authority to enact CGCC-8.

Sections 7 and 8 of the Compact, on which the Commission hangs its alleged authority, explicitly distinguish between two types of authority: Authority to singlehandedly pass

<sup>&</sup>lt;sup>2</sup> The Commission fails to distinguish between the authority to promulgate binding regulations and the authority to ascertain whether the gaming operation complies with those regulations and with the Compact. The Compact grants the first type of authority (a) to Tribal Gaming Agencies acting alone and (b) to the State Gaming Agency upon approval of the Association. We discuss this in further detail below. But the Compact explicitly provides that the State cannot regulate tribes absent Association approval.

Mooretown Rancheria Comments on CGCC-8 November 13, 2008 Page 3 of 5

regulations, which the Compact generally grants to Tribal Gaming Authorities ("TGA"),<sup>3</sup> and authority to ascertain Compact compliance, which the Compact grants to both TGAs and the SGA. For example, Section 7.1 provides that "[i]t is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact..." and explicitly states that "the Tribal Gaming Agency shall adopt and enforce regulations ..." Section 8.1 provides that "[i]n order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations ..." These sections grant TGAs the first type of authority – the authority to singlehandedly pass regulations that bind the tribe. Clearly, when the parties to the Compact sought to grant authority to promulgate regulations, they stated this intent explicitly.

On the other hand, there are other provisions in Compact Sections 7 and 8 that grant a different type of authority. These provisions grant either the TGA or the SGA, or both, authority to take actions intended to assist them in ascertaining whether the gaming operations complies with the Compact. For example, Section 7.2 provides that the TGA "shall investigate any reported violation" of the Compact and "report significant or continued violations of this Compact ... to the State Gaming Agency." Section 7.4 grants the SGA the right to inspect the Casino and all records relating thereto, subject to certain conditions, in order to ascertain Compact compliance, and Section 7.4.4 grants the SGA "access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compniance with this Compact."

In short, there is a clear distinction in the Compact between the authority to *promulgate* binding regulations and the authority to *ascertain* whether the gaming operation complies with those regulations and with the Compact. The TGA alone is entrusted with the first type of authority – except when the Association approves a regulation, in which case the State may also regulate – whereas the TGA and SGA are both granted the second type of authority. The State's role is thus limited in that the State may not – except by approval of the Association – pass regulations that bind the Tribe or the Casino. The State can only monitor Compact compliance and, if it perceives a violation, commence dispute-resolution procedures or seek Association approval for a regulation.

In response to the jurisdictional challenges raised in the "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8", dated February 13, 2008, and to similar challenges raised by individual tribes, the Commission argued that authority to promulgate CGCC-8 stems from the fact that Compact Section 8.4 contemplates State regulations intended to foster statewide regulatory uniformity of Class III gaming operations. Detailed Response at 4. Because the Compact acknowledges that the State may pass such

<sup>&</sup>lt;sup>3</sup> There is only one exception to the general rule that only TGAs have authority to pass binding regulations. That exception, discussed below, is found in section 8.4.1 which grants the SGA limited authority to pass such regulations. But that authority is limited by the requirement of section 8.4.1(a) that all State regulations be approved by the Association. CGCC-8 fails to meet the requirements of section 8.4.1(a) and thus the Commission lacks authority to pass it.



Mooretown Rancheria Comments on CGCC-8 November 13, 2008 Page 4 of 5

regulations, the argument goes, it must have implicitly granted the State unfettered authority to pass them.

We respectfully disagree. While Section 8.4 does contemplate passage of some regulations by the SGA, it also requires that any such regulations be passed in accordance with Section 8.4.1. And Section 8.4.1 states unequivocally that a regulation passed by the SGA will not "be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association ...." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so upon Association approval. Without approval of the Association, the Commission is not empowered to enact regulations that would bind the tribes. And no such approval is forthcoming here.

The Commission also cites Sections 7.4 and 7.4.4 in its Detailed Response as though they grant the State regulation-making authority without the necessity of Association approval. Detailed Response at 5, 13. But those sections do no such thing. Sections 7.4 and 7.4.4 deal with the State's authority to take actions intended to assist it in ascertaining Compact compliance. Section 7.4 provides that "the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming ... and all Gaming Operation or Facility records relating thereto." Clearly, the section does not address, let alone grant, regulation-making authority. And Section 7.4.4 provides that the "State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact." Again, the section neither addresses nor grants regulation-making authority.

The Commission implies that because it has authority to *monitor* Compact compliance it must also have authority to promulgate regulations that would secure such compliance. Detailed Response at 4, 13, 15. But the Commission provides no support for this argument, and in fact none exists. The Compact expressly addresses rulemaking. It explicitly provides that rulemaking authority may be exercised only by the TGA acting alone or by the SGA pursuant to Association approval. There is thus no basis for reading into the Compact an intent to provide independent rulemaking authority to the SGA.

The Commission further implies that the State's authority to monitor Compact compliance must entail authority to promulgate regulations that would secure such compliance because absent the latter type of authority the State's authority to monitor Compact compliance is meaningless. Detailed response at 11. But of course this objection is unfounded because the State retains a means of enforcing its interpretation of what the Compact requires. If the State believes that proper implementation of the Compact is lacking the State is authorized to initiate dispute resolution procedures. The State may also, if it wishes, try to obtain Association approval for a regulation that would require tribes to act in accordance with the State's notions of what the Compact requires. But the Compact does not permit the State to directly regulate tribal gaming operations absent Association approval.



Mooretown Rancheria Comments on CGCC-8 November 13, 2008 Page 5 of 5

In conclusion, the Commission's stated intent to bind tribes to requirements that are not included in Tribal-State compacts through a process that was not sanctioned in the Compact would violate both the Compact and IGRA. IGRA expressly precludes unilateral state regulation of tribal gaming and instead calls for a balance of state and tribal regulatory power achieved through a negotiated compact. The Commission may not unilaterally usurp additional power for itself. Nor may it upset the power balance negotiated by tribes and the State in the Compact. It is precisely this aspect of the Commission's current action that would force tribes to litigate against the Commission's promulgation of CGCC-8.

Sincerely,

Steve Wilson

Chairman, Mooretown Gaming Commission

# FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

Telephone: (415) 491-2310 Fax: (415) 491-2313

GEORGE FORMAN KIMBERLY A. CLUEF JAY B. SHAPIRO JEFFREY R. KEOHANE GEORGE@GFORMANLAW.COM KCLUFF@GFORMANLAW.COM JAY@GFORMANLAW.COM JEFF@GFORMANLAW.COM

May 29, 2009

#### VIA FACSIMILE (916-263-0452) ONLY

Evelyn Matteucci, Chief Counsel California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Re: Cachil Dehe Band of Wintun Indians of the Colusa Indian Community's

Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8

(Minimum Internal Control Standards)

Dear Ms. Matteucci:

Forman & Associates, Attorneys at Law, is legal counsel to the Soboba Band of Luiseño Indians ("Tribe"). Our client has requested that we submit on its behalf the Tribe's comments on the CGCC's April 15, 2009, draft of CGCC-8.

The revised draft marks an improvement, both in tone and substance, over the earlier draft that the CGCC had been prepared to impose. Nonetheless, we continue to regard CGCC-8 as an unnecessary solution to a non-existent problem. The Soboba Gaming Commission closely oversees the Tribe's gaming operation and has adopted and ensures compliance with standards that meet or exceed those promulgated by the NIGC. The oversight provided for in CGCC-8 is simply unnecessary.

Moreover, the Tribe strongly disagrees with the CGCC's apparent position that it can impose this revised version of CGCC-8 on tribes without resubmitting it to the Association for the Association's approval. The Commission's position cannot be reconciled with the plain language of Section 8.4.1(a) of the 1999 Compact:

Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming

Evelyn Matteucci, Chief Counsel California Gambling Control Commission May 29, 2009 Page 2

Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (Emphasis added.)

Finally, the revised draft falls short in one significant respect. We and a number of other tribes have recommended the inclusion of language to the effect that disputes that cannot be resolved through meeting and conferring between the TGA and CGCC staff must be submitted to a third-party neutral for preliminary resolution, and that if the neutral rules for the State, the State cannot resort to §9 dispute resolution or §11 termination proceedings unless the Tribe fails timely to comply with the neutral's decision. We continue to believe that including such a provision would ensure that a dispute over MICS interpretation or compliance cannot trigger a State allegation of material breach, with its potential to put a compact at risk, until all reasonable alternatives have been exhausted. On the following page, we have suggested language that, if included, would largely address this issue.

Very truly yours,

FORMAN & ASSOCIATES

Evelyn Matteucci, Chief Counsel California Gambling Control Commission May 29, 2009 Page 3

#### Suggested Additional Language

<u>Disputes</u>. If a dispute arises between CGCC staff or the CGCC Chairperson and a Tribe concerning a state compliance review finding or any other matter involving the application or interpretation of this regulation (CGCC-8), the following procedure shall be followed:

- (1) The parties shall make good faith efforts to resolve their differences through meeting and conferring within ten (10) business days after one party gives the other party written notice setting forth in detail the existence and basis of the dispute; if these good faith discussions do not resolve the matter, then the matter shall be referred to the full CGCC for review and final decision for the CGCC, deliberations on which shall occur in executive session.
- (2) If after reviewing the matter, the full CGCC makes a final decision to which the Tribe objects, the Tribe shall be entitled to submit the dispute to arbitration, which shall be conducted in accordance with the following procedures and subject to the following understandings:
  - (a) The Tribe and the CGCC, on behalf of the State, consent to arbitration before a single arbitrator, who shall be either a retired judge having experience with gaming issues or a person having experience with internal control standards for casinos (unless the parties agree in writing to waive these requirements), and who shall conduct the arbitration in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent).
  - (b) The arbitrator shall issue a reasoned, written decision with findings of fact and conclusions of law. The arbitrator shall have jurisdiction only to issue a decision declaring whether the Tribe has substantially complied with its obligation(s) under CGCC-8 (including whether the Tribe has failed to maintain or enforce a system of internal control standards as required by this regulation) and whether the CGCC has acted within its authority to enforce the same, and (if relevant) to set a reasonable time by which the non-complying party must correct its action; the arbitrator shall have no authority to award money damages.
  - (c) The arbitrator may not decline to exercise jurisdiction or to issue a decision on the ground that a non-party to the arbitration may have an interest in or could be affected by the dispute, or for failure to join a party who could be deemed "necessary" or "indispensable" under Fed. R. Civ. Pro. 19.

Evelyn Matteucci, Chief Counsel California Gambling Control Commission May 29, 2009 Page 4

- (d) The Tribe and the CGCC each shall bear its own costs, attorneys' fees and one-half of the costs and expenses of the arbitration, unless the arbitrator rules otherwise. Section 1283.05 of the California Code of Civil Procedure shall govern discovery; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.
- (e) In mutual recognition that any dispute concerning the Tribe's compliance with CGCC-8 is specific to the parties and does not affect another Tribe's rights or obligations under CGCC-8, or impact in any way the State's relationship with any other Tribe, the Tribe and the CGCC agree not to assert as a defense the failure to join any other Tribe as a party.
- (f) The arbitrator's decision may not serve as a basis upon which the State may invoke section 11.2.1(c) of the 1999 Compact, or comparable sections of new or amended Compact, or as evidence in any proceeding under that section. Nor may the arbitrator's declaration serve as the basis for any action under the Indian Gaming Regulatory Act, 25 U.S.C. §2701, et seq., by the Tribe or the State.
- (3) If the Tribe refuses to comply with the arbitrator's decision within a reasonable time, the State shall be entitled to invoke the dispute resolution process outlined in section 9.0 of the 1999 Compact, or comparable sections of new or amended Compacts; provided, that the State shall be entitled only to seek an injunction or other appropriate equitable relief against the gaming activity conducted in violation of the 1999 Compact or new or amended Compact, but only if a third-party neutral selected by both parties first has determined that:
  - (a) the Tribe has failed to maintain or enforce a system of internal control standards as required by this regulation, and
  - (b) the Tribe failed to cure the material deficiency found by the third-party neutral in a timely manner, and either
    - (i) the Tribe's failure to maintain or enforce adequate internal control standards actually caused or created an imminent risk of a material breach of the integrity of the Tribe's Class III gaming activities, or caused or created an imminent threat to public health and safety, or
    - (ii) the Tribe's failure to maintain or enforce adequate internal control standards resulted in a failure to pay to the State any amounts due under the applicable Compact in a timely manner and the Tribe fails or refuses to make such payment after having been determined by the third-party neutral to be in default of said obligation.

# FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

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#### FACSIMILE COVER SHEET

TO:

Evelyn Matteucci, Chief Counsel

FAX:

916-263-0452

FROM:

George Forman

DATE:

May 29, 2009

RE:

Soboba Band of Luiseño Indians' Comments re: Re-Adoption of Uniform Tribal

Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

TOTAL NUMBER OF PAGES (including cover sheet): 5

ORIGINAL WILL NOT FOLLOW

#### COMMENTS

Please see attached.



This communication contains information the autorney-client privilege and/or work product doctrine. If to wotify the sender immediately by telephone and return the reconstruction is intended only for the use of the individual or entity to which it is addressed.

# **EXHIBITS C1-C18**

# **EXHIBITS C1-C18**



### Picayune Rancheria of the

#### CHUKCHANSI INDIANS

46575 Road 417 · Coarsegold, CA 93614 · (559) 683-6633 · FAX (559) 683-0599

September 3, 2009

VIA U.S. MAIL & FACSIMILE (916) 263-0499

California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, 95833-4231 Attn: Chairman Dean Shelton

Re: Comments on CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Picayune Rancheria of the Chukchansi Indians ("Tribe") provides the following comments related to "Draft Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)" ("CGCC-8") as requested by the California Gambling Control Commission ("CGCC") in a correspondence dated August 20, 2009, and signed by CGCC Executive Director, Terresa Ciau. The comments contained herein are intended to supplement and be considered collectively with the Tribe's prior communications and comments directed to your office regarding CGCC-8.

Ms. Ciau's indication that, "...the (CGCC) is scheduling a public hearing on CGCC-8 on September 24, 2009 in Sacramento to consider comments as well as possibly voting on a final version of CGCC-8 regulations (sic)" gives great rise to concern. Specifically, the CGCC has yet to properly present a proposed version of CGCC-8 to the delegates of the Tribal-State Association ("Association") for approval in accordance with Section 8.4.1(a) of the Tribal-State Compact between the Tribe and the State of California ("Compact") since the recent overwhelming disapproval of a prior version of CGCC-8 on September 4, 2008. Consequently, until such Association approval is garnered, if at all, adoption of any version of CGCC-8 as "final" by the CGCC will be considered untimely, inconsistent with the agreed upon procedures for effectuating regulations upon the Tribe and therefore disregarded as ineffective upon the Tribe.

The Tribe diligently took part in a number of Association Task Force meetings this summer in a cooperative effort to determine mutually agreeable Compact compliant CGCC-8 language. Because the CGCC has failed to effectively engage the tribes in the Task Force process, as Ms. Ciau indicates the CGCC cannot "sponsor" the proposed alternative revised version of CGCC-8. Albeit for different reasons, the Tribe likewise cannot "sponsor" the Task Force alternative. Specifically, although the Tribe believes the Task Force's alternative is certainly more acceptable than both the October 14, 2008, CGCC adopted version of CGCC-8 and the April 15, 2009, revised version of draft CGCC-8, the Task Force version, in its present form, expands the

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Page 2 of 2 Picayune Rancheria Comments to Draft CGCC-8 September 3, 2009

regulatory role of the State vis-à-vis the CGCC and is therefore tantamount to a Compact amendment.

In an effort to provide the CGCC with meaningful feedback prior to adopting any version of CGCC-8 as a "proposed" regulation in accordance with the compact and protocol of the Association, the Tribe respectfully submits the attached alternative draft version of CGCC-8 for your review and consideration. The Tribe believes the attached revised version of CGCC-8 substantially accomplishes the intent of the CGCC without expanding the State's role with respect to "on-site" regulation of gaming activities which are, and shall remain, the primary responsibility of the Tribe's regulatory gaming agency.

The Tribe is certainly available to meet and discuss the Tribe's alternative version at your pleasure.

Sincerely,

Mours Less Morris Reid, Sr., Chairman

Picayune Rancheria of the Chukchansi Indians

Mark Emerick, Secretary

Picayune Rancheria of the Chukchansi Indians

cc: Tribal Gaming Commission

Philip Hogen, Chairman, National Indian Gaming Commission

Arnold Schwarzenegger, Governor, State of California

Jerry Brown, Attorney General, State of California

Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control

Rosette & Associates, PC

Enclosure

#### Revised Draft of Uniform Tribal Gaming Regulation CGCC-8

#### Table of Contents:

- (a) PURPOSE.
- (b) INTERNAL CONTROL STANDARDS.
- (c) INTERNAL CONTROL SYSTEM.
- (d) VERIFICATION OF TRIBAL MICS.
- (e) NET WIN.
- (f) COMPLIANCE INSPECTION PROTOCOLS.
- (g) COMPACT COMPLIANCE REPORT.
- (h) CONFIDENTIALITY.
- (i) UPDATING INTERNAL CONTROLS AND THIS REGULATION.
- (j) DISPUTES.
- (k) NIGC ALTERNATIVE COMPLIANCE.
- (1) SEVERABILITY.

#### (a) <u>PURPOSE</u>.

- (1) The 1999 Tribal-State Gaming Compact and comparable provisions of the New or Amended Compacts (collectively the "Compacts") provide, under section 6.1 that each Tribe will conduct its Gaming Activities in compliance with a Gaming Ordinance adopted by the Tribal and with rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency ("TGA"). Section 7.1 of the Compacts, places on the TGA the responsibility for the conduct of "on-site gaming regulation and control in order to enforce the terms" of the Compacts. To that end, the TGA is required to adopt and enforce regulations, procedures and practices which ensure that the Gaming Operation "meets the highest standards of regulation and internal controls." Section 8.1 of the Compacts, charges the TGA with responsibility to promulgate rules, regulations and specifications and to ensure their enforcement. Certain subsections of section 8 of the Compacts outline the matters which, at a minimum, these rules, regulations, and specifications must address (collectively, "Internal Control Standards" or Tribal MICS"). Subject to the conditions stated therein, compact sections 7.4 through 7.4.4 provide the State Gaming Agency ("SGA") with rights to inspect the Gaming Facility to ensure compliance with the Compacts.
- (2) The purpose of this regulation is to provide a uniform and effective system for the SGA to verify that the Compacts' rules, regulations, and specifications have been adopted and enforced by the TGA in accordance with the Compacts.
- (3) For purposes of this regulation, the California Gambling Control Commission ("CGCC") is designated as the SGA. Only the CGCC shall be permitted to conduct compliance inspections under this regulation. At no time shall more than one State agency serve as the SGA under this regulation.
- (4) Nothing in this regulation shall modify or otherwise affect the rights and obligations of the SGA under the Compacts, including but not limited to the ability of the CGCC



and the Department of Justice, Bureau of Gambling Control to share documents disclosed pursuant to this regulation, subject to the Compacts' confidentiality provisions.

(5) Unless otherwise defined in this regulation, terms used in this regulation shall have the same meanings and definitions as set forth in the Compacts. Nothing in this regulation shall modify or amend the compacts. To the extent there is any conflict between the provisions of this regulation and the compacts, the provisions of the Compacts shall control.

#### (b) INTERNAL CONTROL STANDARDS.

- (1) <u>General Requirements</u>. Pursuant to the Compacts, each Tribe shall promulgate rules, regulations, and specifications referred to above as "Tribal MICS" regarding the operation of Class III gaming.
- (2) <u>Standard of Compliance</u>. The Minimum Internal Control Standards ("MICS") promulgated by the National Indian Gaming Commission ("NIGC") and set forth at 25 CFR Part 542 (as in effect on October 19, 2006 or as it may be amended), if adopted by a Tribe as its Tribal MICS, satisfy the requirements set forth in section (b)(1) above.

#### (3) Material Compliance.

- (A) <u>Tribal MICS that Meet or Exceed MICS</u>. Notwithstanding the fact that a Tribe has not adopted the MICS pursuant to section (b)(2), a Tribe's Tribal MICS that meet or exceed the standards set forth in the MICS will satisfy the requirements of section (b)(1).
- (B) <u>Alternative Tribal MICS</u>. A Tribe that has not satisfied the standards set forth in sections (b)(2) or (b)(3)(A) shall promulgate rules, regulations and specifications as its Tribal MICS that comply with the Compacts' requirements addressed within this regulation.
- (c) <u>INTERNAL CONTROL SYSTEM</u>. Each Tribe shall ensure that its Gaming Operation implements and maintains an internal controls system that, at a minimum, ensures compliance with the Tribal MICS that apply to its Gaming Operation.
- (d) <u>VERIFICATION OF TRIBAL MICS</u>. The SGA may verify a Tribe's compliance with sections (b)(2) or (b)(3). SGA verification may be accomplished by on or off-site inspection of the Tribal MICS.
- (e) <u>NET WIN</u>. The Compacts' definition of "net win" shall apply to matters covered by this regulation, rather than the definition of "net win" provided at 25 CFR 542.19(d).

#### (f) <u>COMPLIANCE INSPECTION PROTOCOLS</u>.

(1) <u>Preface.</u> Except where section (k) "NIGC ALTERNATIVE COMPLIANCE" applies, the SGA shall follow the protocols in this section (f) with respect to compliance inspections conducted by the SGA pursuant to this regulation. In conducting such inspections,

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the Tribe and the SGA acknowledge that the Tribe's role under the Compacts is to serve as the primary regulator of its Gaming Operation and the SGA's role is to assure that the Tribe's regulatory obligations are being satisfied based on (b)(2), (b)(3)(A) or (b)(3)(B).

- (2) <u>General Approach</u>. The compliance inspection process is accomplished by verifying that the Tribe has adopted rules, regulations and procedures in accordance with the Compact requirements and as set forth generally in section (b) above.
- (3) <u>Initiation of State Compliance Process</u>. The SGA will notify the Tribe and TGA in writing at least 30 days in advance of any scheduled compliance inspection. The written notice will include a specific request for documents to be made available to the SGA during the on-site compliance inspection. At the start of the compliance inspection, an entrance conference will be held to discuss with Tribal and TGA representatives the scope of the compliance inspection, timelines and schedule.
- On-Site Inspection Process. The SGA shall consult with the TGA regarding the method and means by which the Tribe determines that its regulatory efforts are being properly enforced. The SGA may conduct an on-site compliance inspection at the Tribe's gaming facility that the SGA reasonably determines is necessary to ensure compliance with the Compacts. The compliance inspection may encompass, and shall be limited to the subject areas listed in the Tribal MICS. Pursuant to section 7.4 of the Compacts, the SGA will not be denied access to Gaming Operation papers, books, records, equipment or areas of the Gaming Facility, where reasonably necessary to ensure compact compliance. Inspection and copying of Gaming Operation papers, books, and records during any on-site inspection by the SGA may take place during the normal hours of the Gaming Facility's business office and shall not interfere with the normal functioning of the Gaming Operation or Facility. The SGA will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe and TGA and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. No later than 60 days following the SGA's completion of a section (f) on-site compliance inspection, or such other time that may be mutually agreeable, an exit conference will be held to provide the Tribal and TGA representatives an oral and written draft compliance inspection report ("Draft Report") of SGA's proposed findings from the compliance inspection, and allow the SGA and TGA to informally resolve disagreements, if any, with respect to the SGA's Draft Report. Following the exit conference, the TGA may submit written responses to the SGA indicating either rebuttal to or acceptance of the SGA findings and any corrective actions taken by the TGA with respect to any of the SGA's findings for consideration prior to issuing a final compliance inspection report ("Inspection Report"). Any written response from the TGA with respect to the Draft Report shall be included in, and made part of, the Inspection Report.
- (g) <u>COMPLIANCE INSPECTION REPORT.</u> No later than 30 days following the exit interview for a section (f) on-site compliance inspection, or such other time that may be mutually agreeable, the SGA shall deliver an Inspection Report to the Tribe and to the TGA, including specific compliance exceptions, if any. Thereafter the TGA shall investigate the identified exceptions contained in the Inspection Report and direct the Gaming Operation to correct any substantiated exceptions. The Gaming Agency shall report significant or continued violations of

the Compact or failures to comply with its orders to the SGA in accordance with section 7.2 of the Compact.

(h) <u>CONFIDENTIALITY</u>. Pursuant to Compact section 7.4.3(b)(i), the SGA shall exercise utmost care in the preservation of the confidentiality of any and all documents and information received from the Tribe in compliance with this regulation and shall apply the highest standards of confidentiality expected under state law to preserve such documents and information from disclosure.

#### (i) PERIODIC REVIEW OF THIS REGULATION.

- (1) Nothing in this regulation shall be construed to preclude individual Tribes and the SGA from meeting, from time-to-time, to discuss Tribal MICS and compliance matters.
- (2) The Association, as defined in section 2.2 of the Compacts and commonly known as the Tribal-State Regulatory Association, shall meet from time-to-time upon the request of any delegate to discuss possible modifications of this regulation.

#### (j) <u>DISPUTES</u>.

- (1) If a dispute arises between the SGA and a TGA and/or Tribe involving the application or interpretation of this regulation, or any Inspection Report the parties shall make good faith efforts to resolve their differences.
- (2) If these good faith discussions between the SGA and a TGA and/or Tribe do not resolve the matter, the Tribe may voluntarily opt to meet and confer with the appointed/elected officials of the SGA for further consideration. Provided that the CGCC is serving as the SGA, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented to the appointed/elected officials of the SGA for consideration shall be subject to the confidentiality provisions of the Compacts. If, after a voluntary meet and confer session with the appointed/elected officials of the SGA, a dispute remains, it may be resolved pursuant to the dispute resolution process outlined in Compact section 9.0.
- (3) If the TGA and/or Tribe does/do not opt to voluntarily meet and confer with the appointed/elected officials of the SGA, a dispute may be resolved pursuant to the dispute resolution process outlined in Compact.
- (4) Nothing herein shall require the TGA and/or Tribe to meet and confer with the SGA prior to seeking dispute resolution pursuant to the Compact.

#### (k) NIGC ALTERNATIVE COMPLIANCE.

(1) Sections (c), (d), (f), and (g) shall not apply to any Tribe's Gaming Operation while the Tribe has a gaming ordinance in effect that provides for NIGC monitoring and



enforcement of the MICS set forth at 25 CFR Part 542 (as in effect on October 19, 2006, or as it may be amended).

- (2) This NIGC alternative compliance section shall no longer apply to a Tribe's gaming operation in the event that any of the following occur:
  - (A) The Tribal gaming ordinance that provides for NIGC monitoring and enforcement of the MICS is amended to eliminate such monitoring and enforcement;
  - (B) The NIGC is no longer willing or able to perform on-site compliance review or to monitor and ensure MICS compliance; or
  - (C) The NIGC does not commence, for any three (3) year period following the effective date of this regulation, a MICS compliance site inspection/visit, on-site compliance review or audit designed by the NIGC, after a comprehensive review of relevant information, to effectively monitor and ensure MICS compliance, memorialized by an NIGC Report.
- (3) Nothing in this section (l) is intended to amend, supersede, or negate any provision of the Compacts. However, satisfaction of this section (l) shall demonstrate complete and full compliance with Tribal MICS as provided for in section (b)(2) and/or (b)(3)(A) for purposes of this regulation and for purposes of the Compacts.
- (l) <u>SEVERABILITY</u>. If any provision of this regulation or its application is held invalid, the validity of the remaining provisions shall be determined pursuant to applicable rules of statutory and regulatory construction.



### Picayune Rancheria of the

#### CHUKCHANSI INDIANS

46575 Road 417 · Coarsegold, CA 93614 · (559) 683-6633 · FAX (559) 683-0599

August 5, 2009

VIA FACSIMILE (916) 263-0499 & U.S. MAIL California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, 95833-4231 Attn: Chairman Dean Shelton

Re: Reconsideration of CGCC-8 Workshop

Dear Chairman Shelton:

The Picayune Rancheria of the Chukchansi Indians ("Tribe") received a copy of a July 6, 2009 letter from California Gambling Control Commission (CGCC) Executive Director Terresa Ciau, addressed to Tribal-State Association ("Association") Regulatory Standards Task Force ("Task Force") Chairman John Roberts. CGCC's unwillingness to engage in substantive dialog is disappointing to say the least. The CGCC apparently intends to attempt to force Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards dated April 16, 2009) ("CGCC-8") upon the Tribe.

Be certain, the Tribe will vigorously oppose, through all legal means, any attempt by the CGCC to unilaterally modify the regulatory system contemplated by the Tribal-State Compact ("Compact") between the Tribe and the State of California through CGCC-8. The Compact recognizes the Tribal Gaming Commission of the Picayune Rancheria of the Chukchansi Indians ("TGC") as the primary onsite regulatory authority for enforcing the terms of the Compact and the Indian Gaming Regulatory Act, as well as the Tribe's Gaming Ordinance, Regulations and internal control standards for the implementation thereof.

Your current version of CGCC-8 is unacceptable to the Tribe for a number of reasons, including, but not limited to:

- CGCC-8 unilaterally and improperly seeks to amend the Compact.
- CGCC-8 unilaterally seeks to expand CGCC's regulatory authority contemplated in the Compact.



- CGCC-8 unilaterally seeks to impose minimum internal control standards not contemplated in the Compact.
- CGCC-8's National Indian Gaming Commission alternative is ambiguous, arbitrary and impractical.
- CGCC-8 ambiguously and arbitrarily interchanges the terms "Tribe" and "Tribal Gaming Agency" as to compliance requirements.
- CGCC-8 seeks to dilute the TGC's authority as the primary onsite regulatory authority to enforce the Compact.
- CGCC-8 provides no basis for seeking to circumvent tribal sovereignty by purporting to affect an unnecessary solution to a non-existent problem, since the TGC effectively enforces compliance with the Compact within the Tribe's jurisdiction and established set of effective standards.
- CGCC-8 seeks to place the Tribe in the middle of the CGCC's jurisdictional dispute with the Bureau of Gambling Control with regard to the role of the "State Agency" as contemplated by the Compact.
- CGCC-8 and the CGCC's take it or leave attitude toward the Tribe seeks to end the respectful working relationship between the TGC and the Bureau of Gambling Control, particularly as to inspections conducted in accordance with the Compact.

Although the April 16, 2009, version of CGCC-8 is certainly an improvement over the original version presented to the Association in 2007, it remains unacceptable. Executive Director Ciau's statement that, "...the most recent version of CGCC-8 was gaining approval from many Tribal-State Association (Association) members and that there are only two areas of the regulation that required further discussion..." does not accurately represent the Tribe's position. The CGCC appears to have chosen a select handful of tribes to engage in processing CGCC-8, and fails to embrace the Tribe. In particular, the CGCC has failed to provide any meaningful response to any of our comments and suggestions.

The CGCC has relentlessly sought for over two and one-half years to amend the Compact unilaterally by forcing implementation of CGCC-8 without meaningful discussion with the tribes. The purported February 21, 2008 and March 27, 2008 CGCC "workshops" identified by Executive Director Ciau were simply regular CGCC meetings where it relegated CGCC-8 to a common agenda item among other CGCC business. It is indisputable that <u>no</u> meaningful dialog occurred with any tribe at these meetings. Indeed, to the contrary, you stated at the February 21, 2008 CGCC meeting that, "... the (CGCC) considers the information recently submitted by the Association's Regulations Task Force [sic] to be confidential and although the (CGCC) is considering that

information, it will not be presenting any comments concerning the ongoing negotiations at this meeting."

Similarly, at the March 27, 2008, meeting, you and the other Commissioners failed to engage the tribes in any meaningful dialog and then unanimously voted to approve sending CGCC-8, as then drafted, to the Association for consideration. Your final statement at the March 27, 2009, meeting continues to resonate in your now apparent quest to impose CGCC-8 upon the tribes despite overwhelming opposition—"... if you don't like it (CGCC-8), you are free to sue us!"

Many of those present at the March 27, 2008, meeting urged the CGCC to forego pressing forward with the version of CGCC-8 the Association ultimately and overwhelmingly disapproved on September 4, 2008. Ironically, the CGCC has since substantially modified CGCC-8—the tribal representatives who urged you to forego sending the prior version of CGCC-8 to the Association could not have been more correct in their assertions that you and the other Commissioners disregarded. It is critical to understand that the current version of CGCC-8 remains unacceptable to the Tribe. Despite our good faith efforts to engage the CGCC through the Task Force process, we have been unable to garner any meaningful dialog with your staff, who apparently are unauthorized to speak on behalf of the CGCC. Thus, we too are deeply frustrated with the process that was seemingly intended to fail.

Therefore, on behalf of the Picayune Rancheria of the Chukchansi Indians, I strongly urge you to reconsider efforts seeking to amend the Compact unilaterally through CGCC-8, and pursue instead appropriate dialog with the tribes in a true workshop setting, so we may arrive at an appropriate CGCC-8 by which to operate.

Sincerely,

Morris Reid, Sr., Chairman

Picayune Rancheria of the Chukchansi Indians

Moun Kent SR.

cc: Tribal Gaming Commission

> Philip Hogen, Chairman, National Indian Gaming Commission Jerry Brown, Attorney General, State of California Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control

Rosette & Associates, PC





Post Office Box 1120 Boulevard, California 91905 (619) 478-2113 Fax (619) 478-2125

September 2, 2009

VIA U.S. MAIL & FACSIMILE (916) 263-0499
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Comments on CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The La Posta Band of Mission Indians (Tribe) provides the following comments related to "Draft Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)" (CGCC-8) as requested by the California Gambling Control Commission (CGCC) in a correspondence dated August 20, 2009, and signed by CGCC Executive Director, Terresa Ciau. The comments contained herein are intended to supplement and be considered collectively with the Tribe's prior comments regarding CGCC-8.

Ms. Ciau's indication that, "... the (CGCC) is scheduling a public hearing on CGCC-8 on September 24, 2009 in Sacramento to consider comments as well as possibly voting on a final version of CGCC-8 regulations (sic) "gives great rise to concern." Specifically, the CGCC has yet to properly present a proposed version of CGCC-8 to the delegates of the Tribal-State Association (Association) for approval in accordance with Section 8.4.1(a) of the Tribal-State Compact between the Tribe and the State of California (Compact) since the recent overwhelming disapproval of a prior version of CGCC-8 on September 4, 2008. Consequently, until such Association approval is garnered, if at all, adoption of any version of CGCC-8 as "final" by the CGCC will be considered untimely, inconsistent with the agreed upon procedures for effectuating regulations upon the Tribe and therefore disregarded as ineffective upon the Tribe.

The Tribe diligently took part in a number of Association Task Force meetings this summer in a cooperative effort to determine mutually agreeable Compact compliant CGCC-8 language. Because the CGCC has failed to effectively engage the tribes in the Task Force process, Ms. Ciau indicates the CGCC cannot "sponsor" the proposed alternative revised version of CGCC-8: Albeit for different reasons, the Tribe likewise cannot "sponsor" the Task Force alternative. Specifically, although the Tribe believes the

Page 2 of 2 Draft CGCC-8 September 2, 2009

> Task Force's alternative is certainly more acceptable than both the October 14, 2008, CGCC adopted version of CGCC-8 and the April 15, 2009, revised version of draft CGCC-8, the Task Force version, in its present form, expands the regulatory role of the State vis-à-vis the CGCC and is therefore tantamount to a Compact amendment.

In an effort to provide the CGCC with meaningful feedback prior to adopting any version of CGCC-8 as a "proposed" regulation in accordance with the compact and protocol of the Association, the Tribe respectfully submits the attached alternative draft version of CGCC-8 for your review and consideration. The Tribe believes the attached revised version of CGCC-8 substantially accomplishes the intent of the CGCC without expanding the State's role with respect to "on-site" regulation of gaming activities which are, and shall remain, the primary responsibility of the Tribe's regulatory gaming agency.

The Tribe is certainly available to meet and discuss the Tribe's alternative version at your pleasure.

Sincerely,

Gwendolyn Parada, Chairperson La Posta Band of Mission Indians

Tribal Gaming Commission

Philip Hogen, Chairman, National Indian Gaming Commission

Arnold Schwarzenegger, Governor, State of California

Jerry Brown, Attorney General, State of California

Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control

Rosette & Associates, PC

Enclosure

- (2) This NIGC alternative compliance section shall no longer apply to a Tribe's gaming operation in the event that any of the following occur: (A) The Tribal gaming ordinance that provides for NIGC monitoring and enforcement of the MICS is amended to eliminate such monitoring and enforcement; (B) the NIGC is no longer willing or able to perform on-site compliance review or to monitor and ensure MICS compliance.
- (3) Nothing in this section (1) is intended to amend, supersede, or negate any provision of the Compacts. However, satisfaction of this section (1) shall demonstrate complete and full compliance with Tribal MICS as provided for in section (b)(2) and/or (b)(3)(A) for purposes of this regulation and for purposes of the Compacts.
- (I) <u>SEVERABILITY</u>. If any provision of this regulation or its application is held invalid, the validity of the remaining provisions shall be determined pursuant to applicable rules of statutory and regulatory construction.

#### Revised Draft of Uniform Tribal Gaming Regulation CGCC-8 (7-22-09)(R&A)

#### Table of Contents:

- (a) PURPOSE.
- (b) INTERNAL CONTROL STANDARDS.
- (c) INTERNAL CONTROL SYSTEM.
- (d) VERIFICATION OF TRIBAL MICS.
- (e) NET WIN.
- (f) COMPLIANCE INSPECTION PROTOCOLS.
- (g) COMPACT COMPLIANCE REPORT.
- (h) CONFIDENTIALITY.
- (i) <u>UPDATING INTERNAL CONTROLS AND THIS REGULATION</u>.
- (i) DISPUTES.
- (k) NIGC ALTERNATIVE COMPLIANCE.
- (I) SEVERABILITY.

#### (a) PURPOSE.

- Amended Compacts (collectively the "Compacts") provide, under section 6.1 that each Tribe will conduct its Gaming Activities in compliance with a Gaming Ordinance adopted by the Tribe and with rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency ("TGA"). Section 7.1 of the Compacts, places on the TGA the responsibility for the conduct of "on-site gaming regulation and control in order to enforce the terms" of the Compacts. To that end, the TGA is required to adopt and enforce regulations, procedures and practices which ensure that the Gaming Operation "meets the highest standards of regulation and internal controls." Section 8.1 of the Compacts, charges the TGA with responsibility to promulgate rules, regulations and specifications and to ensure their enforcement. Certain subsections of section 8 of the Compacts outline the matters which, at a minimum, these rules, regulations, and specifications must address (collectively, "Internal Control Standards" or Tribal MICS"). Pursuant to the conditions stated therein, compact sections 7.4 through 7.4.4 provide the State Gaming Agency ("SGA") the right to inspect the Gaming Facility to ensure compliance with the Compacts.
- (2) The purpose of this regulation is to provide a uniform and effective system for the SGA to verify that the Compacts' rules, regulations, and specifications have been adopted and enforced by the TGA in accordance with the Compacts.
- (3) For purposes of this regulation, the California Gambling Control Commission ("CGCC") is designated as the SGA. Only the CGCC shall be permitted to conduct compliance inspections under this regulation. At no time shall more than one State agency serve as the SGA under this regulation.
- (4) Nothing in this regulation shall modify or otherwise affect the rights and obligations of the SGA under the Compacts, including but not limited to the ability of the CGCC

and the Department of Justice, Bureau of Gambling Control to share documents disclosed pursuant to this regulation, subject to the Compacts' confidentiality provisions.

(5) Unless otherwise defined in this regulation, terms used in this regulation shall have the same meanings and definitions as set forth in the Compacts. Nothing in this regulation shall modify or amend the compacts. To the extent there is any conflict between the provisions of this regulation and the compacts, the provisions of the Compacts shall control.

#### (b) <u>INTERNAL CONTROL STANDARDS</u>.

- (1) General Requirements. Pursuant to the Compacts, each Tribe shall promulgate rules, regulations, and specifications referred to above as "Tribal MICS" regarding the operation of Class III gaming.
- (2) Standard of Compliance. The Minimum Internal Control Standards ("MICS") promulgated by the National Indian Gaming Commission ("NIGC") and set forth at 25 CFR Part 542 (as in effect on October 19, 2006 or as it may be amended), if adopted by a Tribe as its Tribal MICS, satisfy the requirements set forth in section (b)(1) above.

#### (3) <u>Material Compliance</u>.

- (A) <u>Tribal MICS that Meet or Exceed MICS</u>. Notwithstanding the fact that a Tribe has not adopted the MICS pursuant to section (b)(2), a Tribe's Tribal MICS that meet or exceed the standards set forth in the MICS will satisfy the requirements of section (b)(1).
- (B) Alternative Tribal MICS. A Tribe that has not satisfied the standards set forth in sections (b)(2) or (b)(3)(A) shall promulgate rules, regulations and specifications as its Tribal MICS that comply with the Compacts' requirements addressed within this regulation.
- (c) <u>INTERNAL CONTROL SYSTEM</u>. Each Tribe shall ensure that its Gaming Operation implements and maintains an internal controls system that, at a minimum, ensures compliance with the Tribal MICS that apply to its Gaming Operation.
- (d) <u>VERIFICATION OF TRIBAL MICS</u>. The SGA may verify a Tribe's compliance with sections (b)(2) or (b)(3). SGA verification may be accomplished by on or off-site inspection of the Tribal MICS.
- (e) <u>NET WIN</u>. The Compacts' definition of "net win" shall apply to matters covered by this regulation, rather than the definition of "net win" provided at 25 CFR 542.19(d).

#### (f) <u>COMPLIANCE INSPECTION PROTOCOLS.</u>

(1) <u>Preface.</u> Except where section (k) "NIGC ALTERNATIVE COMPLIANCE" applies, the SGA shall follow the protocols in this section (f) with respect to compliance inspections conducted by the SGA pursuant to this regulation. In conducting such inspections, the Tribe and the SGA acknowledge that the Tribe's role under the Compacts is to serve as the



primary regulator of its Gaming Operation and the SGA's role is to assure that the Tribe's regulatory obligations are being satisfied based on (b)(2), (b)(3)(A) or (b)(3)(B).

- (2) <u>General Approach</u>. The compliance inspection process is accomplished by verifying that the Tribe has adopted rules, regulations and procedures in accordance with the Compact requirements and as set forth generally in section (b) above.
- (3) <u>Initiation of State Compliance Process</u>. The SGA will notify the Tribe and TGA in writing at least 30 days in advance of any scheduled compliance inspection. The written notice will include a specific request for documents to be made available to the SGA during the on-site compliance inspection. At the start of the compliance inspection, an entrance conference will be held to discuss with Tribal and TGA representatives the scope of the compliance inspection, timelines and schedule.
- On-Site Inspection Process. The SGA shall consult with the TGA regarding the method and means by which the Tribe determines that its regulatory efforts are being properly enforced. The SGA may conduct an on-site compliance inspection at the Tribe's gaming facility that the SGA reasonably determines is necessary to ensure compliance with the Compacts. The compliance inspection may encompass, and shall be limited to the subject areas listed in the Tribal MICS. Inspection and copying of Gaming Operation papers, books, and records during any on-site inspection by the SGA may take place during the normal hours of the Gaming Facility's business office and shall not interfere with the normal functioning of the Gaming Operation or Facility. The SGA will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe and TGA and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. No later than 60 days following the SGA's completion of a section (f) on-site compliance inspection, or such other time that may be mutually agreeable, an exit conference will be held to provide the Tribal and TGA representatives an oral and written draft compliance inspection report ("Draft Report") of SGA's proposed findings from the compliance inspection, and allow the SGA and TGA to informally resolve disagreements, if any, with respect to the SGA's Draft Report. Following the exit conference, the TGA may submit written responses to the SGA indicating either rebuttal to or acceptance of the SGA findings and any corrective actions taken by the TGA with respect to any of the SGA's findings for consideration prior to issuing a final compliance inspection report ("Inspection Report"). Any written response from the TGA with respect to the Draft Report shall be included in, and made part of, the Inspection Report.
- (g) <u>COMPLIANCE INSPECTION REPORT.</u> No later than 30 days following the exit interview for a section (f) on-site compliance inspection, or such other time that may be mutually agreeable, the SGA shall deliver an Inspection Report to the Tribe and to the TGA, including specific compliance exceptions, if any. Thereafter the TGA shall investigate the identified exceptions contained in the Inspection Report and direct the Gaming Operation to correct any substantiated exceptions. The Gaming Agency shall report significant or continued violations of the Compact or failures to comply with its orders to the SGA in accordance with section 7.2 of the Compact.



(h) <u>CONFIDENTIALITY</u>. Pursuant to Compact section 7.4.3(b)(i), the SGA shall exercise utmost care in the preservation of the confidentiality of any and all documents and information received from the Tribe in compliance with this regulation and shall apply the highest standards of confidentiality expected under state law to preserve such documents and information from disclosure.

#### (i) PERIODIC REVIEW OF THIS REGULATION.

- (1) Nothing in this regulation shall be construed to preclude individual Tribes and the SGA from meeting, from time-to-time, to discuss Tribal MICS and compliance matters.
- (2) The Association, as defined in section 2.2 of the Compacts and commonly known as the Tribal-State Regulatory Association, shall meet from time-to-time upon the request of any delegate to discuss possible modifications of this regulation.

#### (j) <u>DISPUTES</u>.

- (1) If a dispute arises between the SGA and a TGA and/or Tribe involving the application or interpretation of this regulation, or any Inspection Report the parties shall make good faith efforts to resolve their differences.
- (2) If these good faith discussions between the SGA and a TGA and/or Tribe do not resolve the matter, the Tribe may voluntarily opt to meet and confer with the appointed/elected officials of the SGA for further consideration. Provided that the CGCC is serving as the SGA, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented to the appointed/elected officials of the SGA for consideration shall be subject to the confidentiality provisions of the Compacts. If, after a voluntary meet and confer session with the appointed/elected officials of the SGA, a dispute remains, it may be resolved pursuant to the dispute resolution process outlined in Compact section 9.0.
- (3) If the TGA and/or Tribe does/do not opt to voluntarily meet and confer with the appointed/elected officials of the SGA, a dispute may be resolved pursuant to the dispute resolution process outlined in Compact.
- (4) Nothing herein shall require the TGA and/or Tribe to meet and confer with the SGA prior to seeking dispute resolution pursuant to the Compact.

#### (k) <u>NIGC ALTERNATIVE COMPLIANCE</u>.

(1) Sections (c), (d), (f), and (g) shall not apply to any Tribe's Gaming Operation while the Tribe has a gaming ordinance in effect that provides for NIGC monitoring and enforcement of the MICS set forth at 25 CFR Part 542 (as in effect on October 19, 2006, or as it may be amended).



CONTROL Edination

## Rincon Band of Luiseño Indians

PO Box 68 · Valley Center · CA 92082 · (760) 749-1051 · Fax: (760) 749-8901 September 3, 2009

Via First Class Mail and Facsimile: 916-263-0499

California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833

Re:

CGCC-8 Letter Dated August 20, 2009

Members of the California Gambling Control Commission:

We are in receipt of your recent letter soliciting additional comments regarding CGCC-8. We look forward to continued dialogue regarding the appropriate role for the members of the State Gaming Agency.

#### I. Tribal Task Force Version of CGCC-8.

While the Rincon Band of Luiseño Indians ("Band") does not endorse the Task Force version of CGC 8, we do note that the form of regulation appears to be more respectful of the decision-making processes of the Tribal Gaming Agency, consistent with the explicit provisions of the Tribal State compact.

The April 15<sup>th</sup> version of CGCC-8 would have required that the Tribe adopt the Minimum, Internal Control Standards ("MICS") found at 25 CFR 542 et seq. Alternatively a Tribe could adopt its own tribal MTCS which would then be subject to the approval of the California Gambling Control Commission ("Commission"). Mandatory approval of Tribal Gaming Agency regulations by the Commission is not appropriate or provided for within the Compact.

The rationale presented by the Commission previously is that source of authority for the regulation is found in Section 8.1.1 - 8.1.14 of the Compacts. See April 15<sup>th</sup> version of CGCC-8 at (a)(1). As you are no doubt aware, the 1999 Compact Section 8.1 provides that the Tribal Gaming Agency is vested "with the authority to promulgate, and shall promulgate ... rules and regulations or specifications governing [Sections 8.1.1-8.1.4] and to ensure their enforcement in an effective manner." See 1999 Compact Section 8.1. In contrast with the April 15<sup>th</sup> version of CGCC-8, the Task Force version of CGCC-8 instead confirms that the appropriate standard is the Tribal internal control standards which are adopted and enforced by the Tribal Gaming Agency. This is a change for the better and more respectful of the role of the Tribal Gaming Agency as primary regulator.

For purposes of this letter, the Band is not opining upon the appropriateness of any section of the April 15<sup>th</sup> version of CGCC-8 or the Task Force version of CGCC-8 unless it is specifically referred to within. The absence of comment on a section does not equate approval.

#### II. NIGC Alternative Compliance

Both the April 15<sup>th</sup> and the Task Force versions of CGCC-8 include an "opt out" provision for those Tribes which have "a gaming ordinance in effect that provides for NIGC monitoring and enforcement of the MICS set forth at 25 CFR 542." For a variety or legal and policy reasons, the Band opposes any regular which incorporates such a provision. As stated in our previous comments, per the *CRIT* decision, the Indian

California Gambling Control Commission September 3, 2009 Page Two

Gaming Regulatory Act does not provide the NIGC with the authority to regulate Class III gaming. As the NIGC does not have authority to perform the functions identified within the April 15<sup>th</sup> and Task Force versions of CGCC-8 and the NIGC Alternative Compliance provision is an integral part of the regulation, we believe that such provision would render the entire regulation invalid.

#### III. SGA is Not Excused From Compliance with the Protocols or the Compact

The discussion of possible expansion of the regulatory authority of the Commission and the Bureau of Gambling Control is important. We believe this discussion is best reserved for the Band and the Governor when meeting on a government to government basis to discuss the possibility of a Compact Amendment. The Compact clearly provides that State Gaming Agency regulations are <u>not</u> effective unless and until approved by the Association. <u>See</u> 1999 Compact Section 8.4.1(a). As the Compact does not provide the CGCC or the SGA with unfettered discretion to adopt and enforce regulations over the objections of tribes, any regulation that is not approved by the Association, and/or is in excess of the authority and State Gaming Agency regulation process described within the Compact, is void *ab initio*. Moving forward with any version of CGCC-8, the April 15<sup>th</sup> version, the Task Force version, or otherwise, must comply with the process set forth in the Compact. Any version that alters the scheme set forth in the Compact or nullifies the Tribal Gaming Agency's authority, requires a Compact amendment.

The Band continues to oppose CGCC-8 in its current form and incorporates by reference our previous comments and objections to CGCC-8 as proposed by the Commission. Should the Commission continue to feel that an expanded regulatory footprint is appropriate, we suggest that the Commission bring its concerns to the Governor and suggest that the Governor enter into Compact Amendment negotiations on a government to government basis.

Respectfully,

Bo Mazzetti, Chairman

Stephanie Spencer, Vice Chairwoman

Charlie Kolb, Council Member

Gilbert Parada, Council Member

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## SANTA ROSA RANCHERIA TACHI TRIBE

Ruben Barrios Sr.

Elmer Thomas

**Kevin Thomas** 

Dena Baga

Elaine Jeff / Patricia Davis

Delegates

Chairman

Vice-Chairman

Secretary

Treasurer

Office of the Chief Counsel State of California **Gambling Control Commission** 2399 Gateway Oaks Drive, Suite 220 Sacramento CA, 95833

RE:

COMMENTS TO CGCC8 AS DRAFTED, APRIL 2009 VERSION

Please be advised that the following is being submitted to the State of California Cambling Control Commission (CGCC) in response to the August 20, 2009 letter submitted by the CGCC to the Tribal Chairperson. As you are aware, a motion was passed on June 4, 2009, by the Tribal/State Compact Association Delegates, which included both Tribal and State representatives, to review and address the CGCC 8 as proposed on April 15, 2009. The motion included language that stated as follows: "That the Association hold a meeting on September 17, 2009 to vote on CGCC sas then drafted and that to the extent the Association protocols require it, that this meeting be deemed to be the initial meeting on present CGCC 8 and the September 17 meeting be deemed to be the subsequent meeting. In the spirit and intent of said direction a task force was formed pursuant to the protocol between the Tribes and State, composed of Tribal and State representatives which met over the summer on a number of occasions to address:concerns that various Tribes had with the language of the CGCC 8 as well as the concern that the process for such a regulation was not followed

As a result of said task force meetings, a revised CGCC 8 was brought forward by the Task Force as well as a Task Force Report dated August 7, 2009; that identified the fact that said alternative/revised CGCC 8 was analyzed section by section. This thorough analysis led to many revisions in the revised CGCC 8. in addition the report was very specific as to the following: "Many but not all Association Delegates participating in the task force believe this alternative draft of CGCC8 strikes a more appropriate balance between the tribe's role as the primary gaming regulator under the Compacts and SGA's authority to inspect tribal gaming facilities to verify tribal compliance with the Compacts."

It was an overall consensus amongst those who participated in the task force process that the revised draft is much more palatable to those who disagreed with the original April 15, 2009 draft. The letter of August 20, 2009 written by the CGCC to the Tribes basically indicated that the task force product was ignored and that the work done by the Tribal representatives and the State representatives was not given any credence

The Santa Rosa Rancheria Tachi Yokut Tribe would like to call for re-consideration on the decision to ignore the Task Force's recommendation and that the product from the Task Force is brought forward for the next meeting.

Respectfully, reber Barros In Ruben Barrios Tribal Chairman Santa Rosa Rancheria-Tachi Yokut Tribe Cc: Gaming Commission

### SANTA ROSA RANCHERIA

#### A FEDERALLY RECOGNIZED TRIBE

16835 ALKALI DR. \* P.O. BOX 8 \* LEMOORE, CA 93245 Phone: (559) 924-1278 ext. 4066 \* Fax: (559) 925-2931



Date:	1-4-1	09
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### TRIBAL COUNCIL

## **FAX COVER SHEET**

SEND TO: Chief ounsel	FROM: Ruben Barrins				
COMPANY NAME: Q G C C	COMPANY NAME: SRRTYT				
ATTENTION:	DATE: 9-4-09				
FAX#: 1-910-263-0409	PHONE #:				
URGENT REPLY A.S.A.P COMMENT FYI					
COMMENTS:					
·					

# FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

TELEPHONE: (415) 491-2310 FAX: (415) 491-2313

GEORGE FORMAN KIMBERLY A. CLUFF JAY B. SHAPIRO JEFFREY R. KEOHANE

GEORGE@GFORMANLAW.COM KCLUFF@GFORMANLAW.COM JAY@GFORMANLAW.COM JEFF@GFORMANLAW.COM

September 4, 2009

#### VIA FACSIMILE (916-263-0499) ONLY

Jason Pope, Legal Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re:

Cabuilla Band of Indians' Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Mr. Pope:

Forman & Associates, Attorneys at Law, is legal counsel to the Cahuilla Band of Indians ("Cahuilla" or "Tribe"). On August 25, 2009, Cahuilla received the CGCC's Notice of Amended Version of CGCC-8 and Invitation for Further Comments: Our client has requested that we submit these comments on its behalf.

Like all gaming tribes in the State, Cahuilla supports effective regulation of tribal gaming, something the Tribe's Gaming Agency has made a priority since the opening of the Cahuilla Casino. Nevertheless, Cahuilla opposes adoption of the April 15, 2009 version and the Task Force revision of CGCC-8 for several reasons. As an initial matter, CGCC-8 is an unnecessary solution to a non-existent problem. The Cahuilla Tribal Gaming Agency closely oversees the Tribe's gaming operation and has adopted and ensures compliance with standards that meet or exceed those promulgated by the NIGC. The oversight provided for in CGCC-8 is simply unnecessary.

Moreover, the Tribe strongly disagrees with the CGCC's apparent position that it can impose this revised version of CGCC-8 on tribes without resubmitting it to the Association for the Association's approval. Section 8.4.1(a) of the 1999 Compact provides the relevant language:

Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and



Jason Pope, Legal Division California Gambling Control Commission September 4, 2009 Page 2

the Tribe has had an opportunity to review and comment on the proposed regulation. (Emphasis added.)

Our client fails to see how 8.4.1(a) can be read other than to regard Association approval as a necessary precondition of any regulation (save for a situation involving exigent circumstances—the subd.(d) exception—but one argues that such circumstances exist here). And because the Compact is the sole source of the State's regulatory authority over tribal garning, "enactment" of any version of CGCC-8 without the Association's approval would be invalid ab initio.

Substantively, the April 15 draft and Task Force revision of CGCC-8 fall short in at least two significant respects. First, although the Tribe endorses the inclusion of the NIGC Alternative Compliance option, the CGCC's insistence on reviewing the NIGC's compliance reviews is ill-conceived. With its years of experience, the NIGC should be presumed to have properly and sufficiently reviewed a tribe's compliance with its internal controls. The CGCC's approach—reviewing the NIGC's work—is needlessly duplicative and diverts scarce Commission resources that would be better applied elsewhere.

Second, and more important, since the Commission first proposed CGCC-8 over two years ago, Cahuilla and many other tribes have urged the Commission to include language calling for the submission of disputes to a third-party neutral for preliminary resolution, and recognizing that alleged violations of CGCC-8 would not be deemed material breaches of the Compact itself unless and until a tribe fails to comply with the neutral's order to remedy the violation. Over time, the CGCC has offered various reasons for refusing such language, none of them persuasive.

Although the Task Force revision of CGCC-8 suffers from the same infirmities that afflict the April 15 version, Cahuilla favors the Task Force draft because it adheres more closely to the actual text of the 1999 Compact and conveys a greater recognition of tribal gaming commissions as the primary regulators of tribal gaming. If the CGCC insists on enacting one of these versions of CGCC-8, Cahuilla supports the Task Force's revised version.

Very truly yours,

FORMAN & ASSOCIATES

George Forman

cc: Andrew Hoffstetter, Chairman, Cahuilla Tribal Gaming Agency

## FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

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#### FACSIMILE COVER SHEET

TO:

Jason Pope, Legal Division

FAX:

916-263-0499

FROM:

George Forman

DATE:

September 4, 2009

RE:

CGCC-8

TOTAL NUMBER OF PAGES (including cover sheet): 3

ORIGINAL WILL NOT FOLLOW

#### COMMENTS

Please see attached.

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#### FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 San Rafael, California 94903

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September 4, 2009

#### VIA FACSIMILE (916-263-0499) ONLY

Jason Pope, Legal Division California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Robinson Rancheria Band of Pomo Indians' Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Mr. Pope:

Forman & Associates, Attorneys at Law, is legal counsel to the Robinson Rancheria Band of Pomo Indians ("Robinson Rancheria"). On August 25, 2009, Robinson received the CGCC's Notice of Amended Version of CGCC-8 and Invitation for Further Comments. Our client has requested that we submit these comments on its behalf.

Like all gaming tribes in the State, Robinson Rancheria supports effective regulation of tribal gaming, something the Tribe's Gaming Commission has made a priority since the opening of the Robinson Rancheria Resort & Casino. Nevertheless, Robinson Rancheria opposes adoption of the April 15, 2009 version and the Task Force revision of CGCC-8 for several reasons. As an initial matter, CGCC-8 is an unnecessary solution to a non-existent problem. The Robinson Rancheria Gaming Commission closely oversees the Tribe's gaming operation and has adopted and ensures compliance with standards that meet or exceed those promulgated by the NIGC. The oversight provided for in CGCC-8 is simply unnecessary.

Moreover, the Tribe strongly disagrees with the CGCC's apparent position that it can impose this revised version of CGCC-8 on tribes without resubmitting it to the Association for the Association's approval. Section 8.4.1(a) of the 1999 Compact provides the relevant language:

> Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and



the Tribe has had an opportunity to review and comment on the proposed regulation. (Emphasis added.)

Our client fails to see how 8.4.1(a) can be read other than to regard Association approval as a necessary precondition of any regulation (save for a situation involving exigent circumstances – the subd.(d) exception – but one argues that such circumstances exist here). And because the Compact is the sole source of the State's regulatory authority over tribal gaming, "enactment" of any version of CGCC-8 without the Association's approval would be invalid *ab initio*.

Substantively, the April 15 draft and Task Force revision of CGCC-8 fall short in at least two significant respects. First, although the Tribe endorses the inclusion of the NIGC Alternative Compliance option, the CGCC's insistence on reviewing the NIGC's compliance reviews is ill-conceived. With its years of experience, the NIGC should be presumed to have properly and sufficiently reviewed a tribe's compliance with its internal controls. The CGCC's approach—reviewing the NIGC's work—is needlessly duplicative and diverts scarce Commission resources that would be better applied elsewhere.

Second, and more important, since the Commission first proposed CGCC-8 over two years ago, Robinson Rancheria and many other tribes have urged the Commission to include language calling for the submission of disputes to a third-party neutral for preliminary resolution, and recognizing that alleged violations of CGCC-8 would not be deemed material breaches of the Compact itself unless and until a tribe fails to comply with the neutral's order to remedy the violation. Over time, the CGCC has offered various reasons for refusing such language, none of them persuasive.

Although the Task Force revision of CGCC-8 suffers from the same infirmities that afflict the April 15 version, Robinson Rancheria favors the Task Force draft because it adheres more closely to the actual text of the 1999 Compact and conveys a greater recognition of tribal gaming commissions as the primary regulators of tribal gaming. If the CGCC insists on enacting one of these versions of CGCC-8, Robinson Rancheria supports the Task Force's revised version.

Very truly yours,

FORMAN & ASSOCIATES

George Forman

cc: J. Campaneros, Gaming Commission Chairman



#### FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

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#### FACSIMILE COVER SHEET

TO:

Jason Pope, Legal Division

FAX:

916-263-0499

FROM:

Robinson Rancheria Band of Pomo Indians

DATE:

September 4, 2009

RE:

CGCC-8

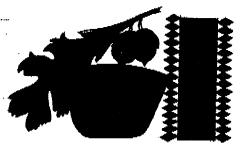
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#### COMMENTS

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September 4, 2009

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Telephone (209) 928-5300 Fax (209) 928-1677

#### VIA FACSIMILE (916) 263-0499

California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, 95833-4231 Attn: Chairman Dean Shelton

Re: Comments on CGCC-8 (Minimum Internal Control Standards)

#### Dear Chairman Shelton:

The Tuolumne Band of Me-Wuk Indians (Tribe) provides the following comments related to "Draft Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)" (CGCC-8) as requested by the California Gambling Control Commission (CGCC) in a correspondence dated August 20, 2009, and signed by CGCC Executive Director, Terresa Ciau. The comments contained herein are intended to supplement and be considered collectively with the Tribe's prior comments regarding CGCC-8.

Ms. Ciau's indication that, "...the (CGCC) is scheduling a public hearing on CGCC-8 on September 24, 2009 in Sacramento to consider comments as well as possibly voting on a final version of CGCC-8 regulations (sic)" gives great rise to concern. Specifically, the CGCC has yet to properly present a proposed version of CGCC-8 to the delegates of the Tribal-State Association (Association) for approval in accordance with Section 8.4.1(a) of the Tribal-State Compact between the Tribe and the State of California (Compact) since the recent overwhelming disapproval of a prior version of CGCC-8 on September 4, 2008. Consequently, until such Association approval is garnered, if at all, adoption of any version of CGCC-8 as "final" by the CGCC will be considered untimely, inconsistent with the agreed upon procedures for effectuating regulations upon the Tribe and therefore disregarded as ineffective upon the Tribe.

The Tribe diligently took part in a number of Association Task Force meetings this summer in a cooperative effort to determine mutually agreeable Compact compliant CGCC-8 language. Because the CGCC has failed to effectively engage the tribes in the Task Force process, Ms. Ciau indicates the CGCC cannot "sponsor" the proposed alternative revised version of CGCC-8. Albeit for different reasons, the Tribe likewise cannot "sponsor" the Task Force alternative. Specifically, although the Tribe believes the Task Force's alternative is certainly more acceptable than both the October 14, 2008, CGCC adopted version of CGCC-8 and the April 15, 2009, revised version of draft

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2009 SEP - 8 ATT 7: 58

Page 2 of 2 Draft CGCC-8 September 4, 2009

CGCC-8, the Task Force version, in its present form, expands the regulatory role of the State vis-à-vis the CGCC and is therefore tantamount to a Compact amendment.

In an effort to provide the CGCC with meaningful feedback prior to adopting any version of CGCC-8 as a "proposed" regulation in accordance with the compact and protocol of the Association, the Tribe respectfully submits the attached alternative draft version of CGCC-8 for your review and consideration. The Tribe believes the attached revised version of CGCC-8 substantially accomplishes the intent of the CGCC without expanding the State's role with respect to "on-site" regulation of gaming activities which are, and shall remain, the primary responsibility of the Tribe's regulatory gaming agency.

The Tribe is certainly available to meet and discuss the Tribe's alternative version at your pleasure.

Sincerely,

Havin A //A) by DTA Kevin A. Day, Chairman

Tuolumne Band of Me-Wuk Indians

cc: Delmar Geisdorff, Chairman, Tuolumne Gaming Agency Philip Hogen, Chairman, National Indian Gaming Commission Arnold Schwarzenegger, Governor, State of California Jerry Brown, Attorney General, State of California Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control Rosette & Associates, PC

Enclosure

#### Revised Draft of Uniform Tribal Gaming Regulation CGCC-8 (7-22-09)(R&A)

#### Table of Contents:

- (a) PURPOSE.
- (b) INTERNAL CONTROL STANDARDS.
- (c) INTERNAL CONTROL SYSTEM.
- (d) VERIFICATION OF TRIBAL MICS.
- (e) NET WIN.
- (f) COMPLIANCE INSPECTION PROTOCOLS.
- (g) COMPACT COMPLIANCE REPORT.
- (h) CONFIDENTIALITY.
- (i) UPDATING INTERNAL CONTROLS AND THIS REGULATION.
- (j) DISPUTES.
- (k) NIGC ALTERNATIVE COMPLIANCE.
- (1) SEVERABILITY.

#### (a) <u>PURPOSE</u>.

- The 1999 Tribal-State Gaming Compact and comparable provisions of the New or **(1)** Amended Compacts (collectively the "Compacts") provide, under section 6.1 that each Tribe will conduct its Gaming Activities in compliance with a Gaming Ordinance adopted by the Tribe and with rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency ("TGA"). Section 7.1 of the Compacts, places on the TGA the responsibility for the conduct of "on-site gaming regulation and control in order to enforce the terms" of the Compacts. To that end, the TGA is required to adopt and enforce regulations, procedures and . practices which ensure that the Gaming Operation "meets the highest standards of regulation and internal controls." Section 8.1 of the Compacts, charges the TGA with responsibility to promulgate rules, regulations and specifications and to ensure their enforcement. Certain subsections of section 8 of the Compacts outline the matters which, at a minimum, these rules, regulations, and specifications must address (collectively, "Internal Control Standards" or Tribal MICS"). Pursuant to the conditions stated therein, compact sections 7.4 through 7.4.4 provide the State Gaming Agency ("SGA") the right to inspect the Gaming Facility to ensure compliance with the Compacts.
- (2) The purpose of this regulation is to provide a uniform and effective system for the SGA to verify that the Compacts' rules, regulations, and specifications have been adopted and enforced by the TGA in accordance with the Compacts.
- (3) For purposes of this regulation, the California Gambling Control Commission ("CGCC") is designated as the SGA. Only the CGCC shall be permitted to conduct compliance inspections under this regulation. At no time shall more than one State agency serve as the SGA under this regulation.
- (4) Nothing in this regulation shall modify or otherwise affect the rights and obligations of the SGA under the Compacts, including but not limited to the ability of the CGCC

and the Department of Justice, Bureau of Gambling Control to share documents disclosed pursuant to this regulation, subject to the Compacts' confidentiality provisions.

(5) Unless otherwise defined in this regulation, terms used in this regulation shall have the same meanings and definitions as set forth in the Compacts. Nothing in this regulation shall modify or amend the compacts. To the extent there is any conflict between the provisions of this regulation and the compacts, the provisions of the Compacts shall control.

#### (b) <u>INTERNAL CONTROL STANDARDS</u>.

- (1) <u>General Requirements</u>. Pursuant to the Compacts, each Tribe shall promulgate rules, regulations, and specifications referred to above as "Tribal MICS" regarding the operation of Class III gaming.
- (2) <u>Standard of Compliance</u>. The Minimum Internal Control Standards ("MICS") promulgated by the National Indian Gaming Commission ("NIGC") and set forth at 25 CFR Part 542 (as in effect on October 19, 2006 or as it may be amended), if adopted by a Tribe as its Tribal MICS, satisfy the requirements set forth in section (b)(1) above.

#### (3) Material Compliance.

- (A) Tribal MICS that Meet or Exceed MICS. Notwithstanding the fact that a Tribe has not adopted the MICS pursuant to section (b)(2), a Tribe's Tribal MICS that meet or exceed the standards set forth in the MICS will satisfy the requirements of section (b)(1).
- (B) <u>Alternative Tribal MICS</u>. A Tribe that has not satisfied the standards set forth in sections (b)(2) or (b)(3)(A) shall promulgate rules, regulations and specifications as its Tribal MICS that comply with the Compacts' requirements addressed within this regulation.
- (c) <u>INTERNAL CONTROL SYSTEM</u>. Each Tribe shall ensure that its Gaming Operation implements and maintains an internal controls system that, at a minimum, ensures compliance with the Tribal MICS that apply to its Gaming Operation.
- (d) <u>VERIFICATION OF TRIBAL MICS</u>. The SGA may verify a Tribe's compliance with sections (b)(2) or (b)(3). SGA verification may be accomplished by on or off-site inspection of the Tribal MICS.
- (e) <u>NET WIN</u>. The Compacts' definition of "net win" shall apply to matters covered by this regulation, rather than the definition of "net win" provided at 25 CFR 542.19(d).

#### (f) COMPLIANCE INSPECTION PROTOCOLS.

(1) <u>Preface.</u> Except where section (k) "NIGC ALTERNATIVE COMPLIANCE" applies, the SGA shall follow the protocols in this section (f) with respect to compliance inspections conducted by the SGA pursuant to this regulation. In conducting such inspections, the Tribe and the SGA acknowledge that the Tribe's role under the Compacts is to serve as the



primary regulator of its Gaming Operation and the SGA's role is to assure that the Tribe's regulatory obligations are being satisfied based on (b)(2), (b)(3)(A) or (b)(3)(B).

- (2) <u>General Approach</u>. The compliance inspection process is accomplished by verifying that the Tribe has adopted rules, regulations and procedures in accordance with the Compact requirements and as set forth generally in section (b) above.
- (3) <u>Initiation of State Compliance Process</u>. The SGA will notify the Tribe and TGA in writing at least 30 days in advance of any scheduled compliance inspection. The written notice will include a specific request for documents to be made available to the SGA during the on-site compliance inspection. At the start of the compliance inspection, an entrance conference will be held to discuss with Tribal and TGA representatives the scope of the compliance inspection, timelines and schedule.
- On-Site Inspection Process. The SGA shall consult with the TGA regarding the method and means by which the Tribe determines that its regulatory efforts are being properly enforced. The SGA may conduct an on-site compliance inspection at the Tribe's gaming facility that the SGA reasonably determines is necessary to ensure compliance with the Compacts. The compliance inspection may encompass, and shall be limited to the subject areas listed in the Tribal MICS. Inspection and copying of Gaming Operation papers, books, and records during any on-site inspection by the SGA may take place during the normal hours of the Gaming Facility's business office and shall not interfere with the normal functioning of the Gaming Operation or Facility. The SGA will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe and TGA and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. No later than 60 days following the SGA's completion of a section (f) on-site compliance inspection, or such other time that may be mutually agreeable, an exit conference will be held to provide the Tribal and TGA representatives an oral and written draft compliance inspection report ("Draft Report") of SGA's proposed findings from the compliance inspection, and allow the SGA and TGA to informally resolve disagreements, if any, with respect to the SGA's Draft Report. Following the exit conference, the TGA may submit written responses to the SGA indicating either rebuttal to or acceptance of the SGA findings and any corrective actions taken by the TGA with respect to any of the SGA's findings for consideration prior to issuing a final compliance inspection report ("Inspection Report"). Any written response from the TGA with respect to the Draft Report shall be included in, and made part of, the Inspection Report.
- (g) <u>COMPLIANCE INSPECTION REPORT.</u> No later than 30 days following the exit interview for a section (f) on-site compliance inspection, or such other time that may be mutually agreeable, the SGA shall deliver an Inspection Report to the Tribe and to the TGA, including specific compliance exceptions, if any. Thereafter the TGA shall investigate the identified exceptions contained in the Inspection Report and direct the Gaming Operation to correct any substantiated exceptions. The Gaming Agency shall report significant or continued violations of the Compact or failures to comply with its orders to the SGA in accordance with section 7.2 of the Compact.

(h) <u>CONFIDENTIALITY</u>. Pursuant to Compact section 7.4.3(b)(i), the SGA shall exercise utmost care in the preservation of the confidentiality of any and all documents and information received from the Tribe in compliance with this regulation and shall apply the highest standards of confidentiality expected under state law to preserve such documents and information from disclosure.

#### (i) PERIODIC REVIEW OF THIS REGULATION.

- (1) Nothing in this regulation shall be construed to preclude individual Tribes and the SGA from meeting, from time-to-time, to discuss Tribal MICS and compliance matters.
- (2) The Association, as defined in section 2.2 of the Compacts and commonly known as the Tribal-State Regulatory Association, shall meet from time-to-time upon the request of any delegate to discuss possible modifications of this regulation..

#### (j) <u>DISPUTES</u>.

- (1) If a dispute arises between the SGA and a TGA and/or Tribe involving the application or interpretation of this regulation, or any Inspection Report the parties shall make good faith efforts to resolve their differences.
- (2) If these good faith discussions between the SGA and a TGA and/or Tribe do not resolve the matter, the Tribe may voluntarily opt to meet and confer with the appointed/elected officials of the SGA for further consideration. Provided that the CGCC is serving as the SGA, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented to the appointed/elected officials of the SGA for consideration shall be subject to the confidentiality provisions of the Compacts. If, after a voluntary meet and confer session with the appointed/elected officials of the SGA, a dispute remains, it may be resolved pursuant to the dispute resolution process outlined in Compact section 9.0.
- (3) If the TGA and/or Tribe does/do not opt to voluntarily meet and confer with the appointed/elected officials of the SGA, a dispute may be resolved pursuant to the dispute resolution process outlined in Compact.
- (4) Nothing herein shall require the TGA and/or Tribe to meet and confer with the SGA prior to seeking dispute resolution pursuant to the Compact.

#### (k) NIGC ALTERNATIVE COMPLIANCE.

(1) Sections (c), (d), (f), and (g) shall not apply to any Tribe's Gaming Operation while the Tribe has a gaming ordinance in effect that provides for NIGC monitoring and enforcement of the MICS set forth at 25 CFR Part 542 (as in effect on October 19, 2006, or as it may be amended).

- (2) This NIGC alternative compliance section shall no longer apply to a Tribe's gaming operation in the event that any of the following occur: (A) The Tribal gaming ordinance that provides for NIGC monitoring and enforcement of the MICS is amended to eliminate such monitoring and enforcement; (B) the NIGC is no longer willing or able to perform on-site compliance review or to monitor and ensure MICS compliance.
- (3) Nothing in this section (l) is intended to amend, supersede, or negate any provision of the Compacts. However, satisfaction of this section (l) shall demonstrate complete and full compliance with Tribal MICS as provided for in section (b)(2) and/or (b)(3)(A) for purposes of this regulation and for purposes of the Compacts.
- (1) <u>SEVERABILITY</u>. If any provision of this regulation or its application is held invalid, the validity of the remaining provisions shall be determined pursuant to applicable rules of statutory and regulatory construction.



#### **BIG SANDY RANCHERIA**

September 4, 2009

Elizabeth D. Kipp

Office of the Chief Counsel State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento CA, 95833

Miles Baty Vice Chair

Chairperson

RE: COMMENTS TO CGCC8 AS DRAFTED, APRIL 2009 VERSION

Lisa Garcia Secretary

Johnny Baty Treasurer

Arrow Sample Member-At-Large

Please be advised that the following is being submitted to the State of California Gambling Control Commission (CGCC) in response to the August 20, 2009 letter submitted by the CGCC to the Tribal Chairperson. As you are aware, a motion was passed on June 4, 2009, by the Tribal/State Compact Association Delegates, which included both Tribal and State representatives, to review and address the CGCC 8 as proposed on April 15, 2009. The motion included language that stated as follows: "That the Association hold a meeting on September 17, 2009 to vote on CGCC 8 as then drafted and that to the extent the Association protocols require it, that this meeting be deemed to be the initial meeting on present CGCC 8 and the September 17 meeting be deemed to be the subsequent meeting. In the spirit and intent of said direction a task force was formed pursuant to the protocol between the Tribes and State, composed of Tribal and State representatives which met over the summer on a number of occasions to address concerns that various Tribes had with the language of the CGCC 8 as well as the concern that the process for such a regulation was not followed.

As a result of said task force meetings, a revised CGCC 8 was brought forward by the Task Force as well as a Task Force Report dated August 7, 2009, that identified the fact that said alternative/revised CGCC 8 was analyzed section by section. This thorough analysis led to many revisions in the revised CGCC 8. In addition the report was very specific as to the following: "Many but not all Association Delegates participating in the task force believe this alternative draft of CGCC 8 strikes a more appropriate balance between the tribe's role as the primary gaming regulator under the Compacts and SGA's authority to inspect tribal gaming facilities to verify tribal compliance with the Compacts."

> 37387 Auberry Mission Road ~ P.O. Box 337~ Auberry, California 93602 Phone: 559.855.4003 ~ Fax: 559.855.4129

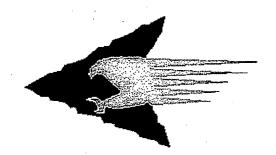
It was an overall consensus amongst those who participated in the task force process that the revised draft is much more palatable to those who disagreed with the original April 15, 2009 draft. The August 20, 2009 written by the CGCC to the Tribes basically indicated that the task force product was ignored and that the work done by the Tribal representatives and the State representatives was not given any credence.

It is our Tribe's recommendation that the alternative language in the revised CGCC 8 be seriously reviewed and reconsidered by the CGCC and that this reconsideration is brought to the Association on September 17, 2009.

Respectfully,

Elizabeth D. Kipp Tribal Chairperson

willedly z



## **Big Sandy Rancheria**

37387 Auberry Mission Road PO Box 337 Auberry, CA 93602 Phone: 559-855-4003 Fax: 559-855-4129

Finance Fax: 559-855-5509

## FAX

TO: CGCC- Jason Pope, Legal Division

FROM:

Elizabeth D. Kipp

FAX: 1

1-916-263-0499

PAGES:

3- including cover

RE:

Written Comments- CGCC 8

DATE:

9/4/2009

X\_ URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

PLEASE RECYCLE

Comments:

2009 SEP -8 AN 7: 57













MIWOK MAIDU United Auburn Indian Community of the Auburn Rancheria

JESSICA TAVARES CHAIRPERSON	JOHN SUEHEAD VICE CHAIR	David Keyser Secretary	DOLLY SUEHEAD TREASURER	GENE WHITEHOUSE COUNCIL MEMBER
September 1, 20	009			CONTROL TO
Via Facsimile 91	16-263-0499	•		
ATTN: Jason P	oling Control Commope, Legal Divisior Daks Drive, Suite 2 A 95833-4231	۱۰۰,		35

RE: Invitation for Further Comments On CGCC-8 & Task Force Report

Dear California Gambling Control Commissioners:

The United Auburn Indian Community ("United Auburn" or the "Tribe") submits these comments in response to your invitation by letter dated August 20, 2009.

United Auburn supports and ensures strong, effective, and efficient regulation of our Thunder Valley Casino. As we have previously stated, and like all of the Task Force members except for California Gambling Control Commission (CGCC) representatives, we object to the CGCC's proposed adoption of its April 15, 2009 draft regulation entitled CGCC-8 on numerous grounds.

We do, however, support the collaborative efforts of the Task Force to develop a draft regulation which strikes a more appropriate balance between the tribes' role as primary regulator under the Compacts and the state's authority to verify Compact compliance. The NIGC Alternative Compliance Section strives to recognize that federal oversight ensures MICS compliance while also addressing CGCC concerns and interests. On balance, we believe the Task Force's revised draft attached thereto as Attachment B ("Alternative Regulation") incorporates significant improvements and therefore express our support for it.

To the extent CGCC intends to adopt a proposed MICS regulation at its September 24, 2009, hearing, we urge the CGCC to adopt the Task Force's Alternative Regulation. We, however, do not support any unilateral modification of the Alternative Regulation. We further note that all uniform state regulations applicable to tribal casinos must be approved by the Tribal-State Gaming Association to become effective.

Sincerely,

Lessica Tavares, Chairperson United Auburn Indian Community

Cc: Ron M. Jaeger, Chairman UAIC Tribal Gaming Agency

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## FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

TELEPHONE: (415) 491-2310 FAX: (415) 491-2313

GEORGE FORMAN KIMBERLY A. CLUFF JAY B. SHAPIRO JEFFREY R. KEOHANE

GEORGE@GFORMANLAW.COM KCLUFF@GFORMANLAW.COM JAY@GFORMANLAW.COM JEFF@GFORMANLAW.COM

September 4, 2009

#### VIA FACSIMILE (916-263-0499) ONLY

Jason Pope, Legal Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re:

Morongo Band of Indians' Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Mr. Pope:

Forman & Associates, Attorneys at Law, is legal counsel to the Morongo Band of Indians ("Morongo" or "Tribe"). On August 25, 2009, Morongo received the CGCC's Notice of Amended Version of CGCC-8 and Invitation for Further Comments. Our client has requested that we submit these comments on its behalf.

Like all gaming tribes in the State, Morongo supports effective regulation of tribal gaming, something the Tribe's Gaming Agency has made a priority since the opening of the Morongo Casino. Nevertheless, Morongo opposes adoption of the April 15, 2009 version and the Task Force revision of CGCC-8 for several reasons. As an initial matter, CGCC-8 is an unnecessary solution to a non-existent problem. The Morongo Tribal Gaming Agency closely oversees the Tribe's gaming operation and has adopted and ensures compliance with standards that meet or exceed those promulgated by the NIGC. The oversight provided for in CGCC-8 is simply unnecessary.

Moreover, the Tribe strongly disagrees with the CGCC's apparent position that it can impose this revised version of CGCC-8 on tribes without resubmitting it to the Association for the Association's approval. Section 8.4.1(a) of the 1999 Compact provides the relevant language:

Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and

Jason Pope, Legal Division California Gambling Control Commission September 4, 2009 Page 2

the Tribe has had an opportunity to review and comment on the proposed regulation. (Emphasis added.)

Our client fails to see how 8.4.1(a) can be read other than to regard Association approval as a necessary precondition of any regulation (save for a situation involving exigent circumstances — the subd.(d) exception — but one argues that such circumstances exist here). And because the Compact is the sole source of the State's regulatory authority over tribal gaming, "enactment" of any version of CGCC-8 without the Association's approval would be invalid ab initio.

Substantively, the April 15 draft and Task Force revision of CGCC-8 fall short in at least two significant respects. First, although the Tribe endorses the inclusion of the NIGC Alternative Compliance option, the CGCC's insistence on reviewing the NIGC's compliance reviews is ill-conceived. With its years of experience, the NIGC should be presumed to have properly and sufficiently reviewed a tribe's compliance with its internal controls. The CGCC's approach—reviewing the NIGC's work—is needlessly duplicative and diverts scarce Commission resources that would be better applied elsewhere.

Second, and more important, since the Commission first proposed CGCC-8 over two years ago, Morongo and many other tribes have urged the Commission to include language calling for the submission of disputes to a third-party neutral for preliminary resolution, and recognizing that alleged violations of CGCC-8 would not be deemed material breaches of the Compact itself unless and until a tribe fails to comply with the neutral's order to remedy the violation. Over time, the CGCC has offered various reasons for refusing such language, none of them persuasive.

Although the Task Force revision of CGCC-8 suffers from the same infirmities that afflict the April 15 version, Morongo favors the Task Force draft because it adheres more closely to the actual text of the 1999 Compact and conveys a greater recognition of tribal gaming commissions as the primary regulators of tribal gaming. If the CGCC insists on enacting one of these versions of CGCC-8, Morongo supports the Task Force's revised version.

Very truly yours,

FORMAN & ASSOCIATES

George Forman

cc: Jerry Schultze, Executive Director

# FORMAN & ASSOCIATES ATTORNEYS AT LAW 4340 REDWOOD HIGHWAY, SUITE E352 SAN RAFAEL, CALIFORNIA 94903

Telephone: (415) 491-2310

FAX: (415) 491-2313

GEORGE FORMAN KIMBERLY A. CLUFF JAY B. SHAPIRO JEFFREY R. KEOMANE

GEORGE@GFORMANLAW.COM KCLUFF@GFORMANLAW.COM JAY@GFORMANLAW.COM JEPF@GFORMANLAW.COM

#### FACSIMILE COVER SHEET

TO:

Jason Pope, Legal Division

FAX:

916-263-0499

FROM:

Morongo Band of Mission Indians

DATE:

September 4, 2009

RE:

CGCC-8

TOTAL NUMBER OF PAGES (including cover sheet): 3

ORIGINAL WILL NOT FOLLOW

#### COMMENTS

Please see attached.

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# TULE RIVER TRIBAL COUNCIL TULE RIVER INDIAN RESERVATION

Office of the Chief Counsel State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento CA. 95833

RE: COMMENTS TO CGCC8 AS DRAFTED, APRIL 2009 VERSION

Please be advised that the following is being submitted to the State of California Gambling Control Commission (CGCC) in response to the August 20, 2009 letter submitted by the CGCC to the Tribal Chairperson. As you are aware, a motion was passed on June 4, 2009, by the Tribal/State Compact Association Delegates, which included both Tribal and State representatives, to review and address the CGCC 8 as proposed on April 15, 2009. The motion included language that stated as follows: "That the Association hold a meeting on September 17, 2009 to vote on CGCC 8 as then drafted and that to the extent the Association protocols require it, that this meeting be deemed to be the initial meeting on present CGCC 8 and the September 17 meeting be deemed to be the subsequent meeting. In the spirit and intent of said direction a task force was formed pursuant to the protocol between the Tribes and State, composed of Tribal and State representatives which met over the summer on a number of occasions to address concerns that various Tribes had with the language of the CGCC 8 as well as the concern that the process for such a regulation was not followed.

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It was an overall consensus amongst those who participated in the task force process that the revised draft is much more palatable to those who disagreed with the original

Phone (559) 781-4271 Fax (559) 781-4610 P.O. Box 589 Porterville, California 93258



April 15, 2009 draft. The August 20, 2009 written by the CGCC to the Tribes basically indicated that the task force product was ignored and that the work done by the Tribal representatives and the State representatives was not given any credence.

It is our Tribe's recommendation that the alternative language in the revised CGCC 8 be seriously reviewed and reconsidered by the CGCC and that this reconsideration be brought to the Association on September 17, 2009.

Respectfully

Ryan Garfield

Chairman, Tule River

Cc:



### TULE RIVER TRIBE GAMING COMMISSION

"Protecting the assets of the tribe"

TO:	office of the chief co	ansel.	
•	State of California		
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#### Paskenta Band of Nomlaki Indians

P.O. Box 398 Orland, CA 95963

Phone: (530) 865-2010 Fax: (530) 865-1870

CONTROL Constitution

September 4, 2009

#### VIA FACSIMILE & POSTAL SERVICE

Jason Pope Legal Division California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Re: Paskenta Band of Nomlaki Indians' Supplemental Comments to CGCC-8

Dear Mr. Pope:

The Paskenta Band of Nomlaki Indians (the "Tribe") thanks the California Gambling Control Commission ("CGCC") for the opportunity to further comment upon the draft regulation entitled CGCC-8. In addition, we appreciate that the CGCC staff participated in the Association Regulatory Standards Task Force ("Task Force") meetings held this summer to address the CGCC's April 15, 2009 Draft of CGCC-8 ("April 15, 2009 Draft").

By letter dated May 26, 2009, the Tribe previously commented on the April 15, 2009 Draft. For the reasons stated therein, the Tribe continues to oppose the April 15, 2009 Draft. Rather than restate our objections to that draft in this letter, we wish to address matters going forward.

We reviewed the Association Regulatory Standards Task Force ("Task Force") Final Report and the Task Force's revised draft of CGCC-8 ("Task Force Revised Draft"). We appreciate the time and effort made by the tribal and state representatives that participated in the preparation of the Task Force Revised Draft. We understand, based upon the Task Force's report that all members of the Task Force, except the CGCC, support the Task Force Revised Draft.

The Tribe believes that CGCC-8 is generally unnecessary because the Paskenta Tribal Gaming Commission stringently regulates the Rolling Hills Casino, the National Indian Gaming Commission ("NIGC") monitors and enforces Tribal compliance with the federal minimum internal controls standards set forth in 25 C.F.R. Part 542, and the State Gaming Agency, through the California Bureau of Gambling Control ("BGC"), performs limited secondary inspections of the Tribe's gaming operation under conditions set forth in the Tribe's tribal-state gaming

compact. Effectively, three (3) regulatory agencies monitor the Tribe's gaming operation without CGCC-8.

The Task Force's Revised Draft contain reasonable modifications to the April 15, 2009 Draft. The modifications to the NIGC Alternative Compliance section of the regulation as set forth in the Task Force's Revised Draft appears to more realistically describe the NIGC's regulatory procedures and compliance review process and provide a practical approach under federal and tribal law as well as the tribal-state compact.

Recently, the NIGC informed tribes, the CGCC and BGC that it will provide work papers to tribes that request such documents. The NIGC's representation offers a real opportunity for the NIGC Alternative Compliance as set forth in the Task Force's Revised Draft to provide a workable procedure for all interested parties.

The Tribe reaffirms its opposition to the April 15, 2009 Draft. However, the Tribe considers the Task Force Revised Draft to represent a more reasonable and practical alternative to the April 15, 2009 Draft. Further, the Task Force's modifications to the NIGC Alternative Compliance section may provide a workable and meaningful alternative procedure worthy of consideration by all interested parties.

The Tribe urges the CGCC to formally adopt the Task Force Revised Draft as the CGCC's proposed regulation and to introduce it to the tribal-state Association as the State Gaming Agency's proposed regulation in accordance with the tribal-state Association's protocol and the applicable provisions of the various tribal-state compacts.

Sincerely,

Everett Freeman

Chairman

cc: The Paskenta Tribal Council

The Paskenta Tribal Gaming Commission





## Pauma Band of Mission Indians

P.O. Box 369 • Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

Established 1893

September 3, 2009

Attn: Mr. Pope, Legal Division California Gambling Control Commission 2399 Gateway Oaks, Suite 100 Sacramento, CA 95833

BY FAX (916-263-0452)

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Mr. Pope:

In response to the California Gambling Control Commission's ("CGCC") letter dated August 20, 2009, the Pauma Band of Mission Indians ("Tribe") and the Pauma Gaming Commission hereby jointly submit the following comments regarding CGCC-8. These comments are in addition to those already set forth in our comment letter dated February 19, 2008, the Pauma Gaming Commission's comment letter of October 12 or 13, 2008, the Tribe's comment letter of November 2008, and our joint comment letter of May 2009.

First, we reiterate that the April 15, 2009 draft of CGCC-8 circulated by the CGCC is a significant improvement on its earlier draft. We appreciate the progress CGCC made in addressing some of the tribes' comments and concerns. In addition, we commend the CGCC's staff for their active participation the Association Task Force's summer meetings in which tribal and state delegates attempted to resolve some of the outstanding issues concerning the proposed regulation. The Tribe and the Pauma Gaming Commission believe the Task Force's revised version of CGCC-8, dated August 6, 2009, does represent an improvement on the April 15, 2009 CGCC draft of CGCC-8.

The Tribe has adopted the National Indian Gaming Commission's ("NIGC") Minimum Internal Control Standards ("MICS") in its gaming laws and also therein expressly authorized the NIGC to continue to monitor and enforce the Tribe's compliance with the MICS. Therefore, we support the concept of carving out an exemption from the CGCC-8 for Tribes with such NIGC oversight, as reflected in section (o) of the April 15, 2009 CGCC draft and section (m) of the August 6, 2009 Task Force draft.

However, we remain unable to support either version of CGCC-8 on the ground that said sections, as drafted, represent an improper attempt to amend the Tribal-State Compact in circumvention of section 12.1 of the Compact, because these sections impose obligations on the Tribal Gaming Agency to share information and take other action that is not required under the Tribal-State Compact.

<sup>&</sup>lt;sup>1</sup> Despite repeated requests, as outlined in said correspondence, the Tribe has never received confirmation that this correspondence was incorporated into the official record concerning the development of CGCC-8. We ask that the CGCC resolve this outstanding issue.



At the same time, the Tribe and the Pauma Gaming Commission recognize the potential benefit of having a streamlined process in place to permit the CGCC to carry out some form of inspection under section 7.4 of the Tribal-State Compact to ensure compliance with Section 8.1 of the Compact. For this reason, the Tribe and the Pauma Gaming Commission suggest an alternative approach for the CGCC to pursue instead of CGCC-8.

Specifically, we would be interested in pursuing a MOU with the CGCC, on a government-to-government basis, to provide for a streamlined inspection process relating to the SGA's role in ensuring compliance with the internal control standards contemplated by Section 8.1 of the Compact. This approach is similar to that adopted by the NIGC when it entered into an MOU with this Tribe and others to arrive at a streamlined process for reporting to the NIGC on licensing and background investigations or to that adopted by the then Division of Gambling Control when it entered into an MOA with us concerning the definition of "non-key Gaming Employees" under our Tribal-State Compact.

We recognize from the Task Force discussions that there are some tribes that support the August 6, 2009 Task Force draft of CGCC-8. Perhaps there are other tribes who are even supportive of the April 15, 2009 CGCC draft. For this reason, we would have no objection to the CGCC adopting a version of CGCC-8 that made it clear that it is an optin regulation. That is, the regulation would only apply to those tribes that consent to its application.

In summary, the Pauma Band of Mission Indians and the Pauma Gaming Commission respectfully ask the CGCC: 1) not to adopt CGCC-8 but rather to pursue an MOU with the Tribe on a government-to-government basis to achieve the objective reflected in section (o) of the April 15, 2009 CGCC draft and section (m) of the August 6, 2009 Task Force draft; and/or 2) to adopt the version of CGCC-8 that has the most tribal support but as an opt-in regulation.

Respectfully,

Chris Devers, Chairman

Pauma Band of Mission Indians

Lenora "Dee" Cline, President Pauma Gaming Commission

c.c. Dean Shelton, Chairperson, CGCC



### Elk Valley Ranchería, Californía



September 4, 2009

2332 Howland Hill Road Crescent City, CA 95531

> Phone: 707.464.4680 Fax: 707.465.2638 ranchería@elk-valley.com

VIA FACSIMILE & POSTAL SERVICE 916-263-0499

California Gambling Control Commission ATTN: Jason Pope, Legal Division 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Re: Invitation for Further Comments On CGCC-8 & Task Force Report

Dear Commissioners:

The Elk Valley Rancheria, California (the "Tribe") submits these comments in response to your August 20, 2009 letter.

The Tribe supports and ensures strong, effective, and efficient regulation of our Elk Valley Casino. As we have previously stated, and like all of the Task Force members except for California Gambling Control Commission (CGCC) representatives, we object on numerous grounds to the CGCC's proposed adoption of its April 15, 2009 draft regulation entitled CGCC-8.

We support the collaborative efforts of the Task Force to develop a draft regulation which strikes a more appropriate balance between California tribes' role as primary regulator under the various tribal-state compacts and the state's authority to verify tribal-state compact compliance. The NIGC Alternative Compliance Section strives to recognize that federal oversight ensures MICS compliance while also addressing CGCC concerns and interests. On balance, we believe the

CGCC LEGAL DIVISION

Task Force's revised draft attached thereto as Attachment B ("Alternative Regulation") incorporates significant improvements and therefore express our support for it.

To the extent CGCC intends to adopt a proposed MICS regulation at its September 24, 2009, hearing, we urge the CGCC to adopt the Task Force's Alternative Regulation in whole, without modification. We do not support any unilateral modification of the Alternative Regulation. We further note that all uniform state regulations applicable to tribal casinos must be approved by the Tribal-State Gaming Association to become effective. Therefore, we also urge the CGCC to comply with the Tribal-State Gaming Association protocol and similar provisions of the tribal-state compacts.

Sincerely,

Dale A. Miller Chairman Mula

cc: Elk Valley Tribal Council
Elk Valley Tribal Gaming Commission
Tribal Administrator
CEO
Office of Tribal Attorney



### Mooretown Rancheria #1 Alverda Drive Oroville, CA 95966 (530) 533-3625 Office

September 4, 2009

State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, Ca. 95833-4231

Re: Comments CGCC-8

Dear Sir or Madam:

The Mooretown Rancheria ("Tribe") respectfully submits comments? opposing passage of CGCC-8 following the California Gambling Control Commission's ("Commission") approval thereof. We recognize the importance of internal control standards to the integrity of tribal gaming and work hard to make sure our gaming operation fully complies with industry standard controls. We nonetheless oppose the Commission's promulgation of CGCC-8 because it purports to usurp the Tribe's rightand duty under the Compact to promulgate the regulations that control the casino operational standards addressed in the MICS. Commission cannot dictate any standards that are not set in the Compact without approval of the Tribal-State Association ("Association"). Absent Association approval the State's regulations cannot "be effective with respect to the Tribe's Gaming Operation." Compact section 8.4.1(a). Accordingly, we propose that the Commission work cooperatively with the Association to find alternative ways of reaching its stated goals without exceeding its jurisdiction and violating the Tribe's rights under its Compact.

(530) 533-3680 Fax

Our opposition to CGCC-8 is based in federal law, which provides that states can only regulate class III gaming to the extent agreed to by tribes, and in section 8.4.1(a) of our Compact which provides that State regulations affecting tribal gaming are only effective if approved by the Association. Because compliance with the particular standards found in CGCC-8 is not required under the Compact, tribes are not currently bound by those standards. If the Commission wishes to impose such compliance through regulation it must obtain Association approval. When, as here, the Association disapproves a regulation, that regulation cannot be binding on the Tribe.

"Concow - Maidu"



Congressional intent regarding tribal gaming is very clear. The Indian Gaming Regulatory Act only permits a state to regulate tribal gaming operations to the extent agreed by the tribe in a Tribal-State Compact. 25 U.S.C. § 2710(d)(3)(C). The question here is whether the existing Tribal-State Compacts authorize the Commission to pass CGCC-8 without Association approval. They do not.

Sections 7 and 8 of the Compact, on which the Commission hangs its alleged authority, explicitly distinguish between two types of Authority to singlehandedly pass regulations, which the Compact generally grants to Tribal Gaming Authorities ("TGA"), and authority to ascertain Compact compliance, which the Compact grants to both TGAs and the SGA. For example, Section 7.1 provides that "[i]t is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact..." and explicitly states that "the Tribal Gaming Agency shall adopt and enforce regulations ..." Section 8.1 provides that "[i]n order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations ..." These sections grant TGAs the first type of authority the authority to singlehandedly pass regulations that bind the tribe. Clearly, when the parties to the Compact sought to grant authority to promulgate regulations, they stated this intent explicitly.

On the other hand, there are other provisions in Compact Sections 7 and 8 that grant a different type of authority. These provisions grant either the TGA or the SGA, or both, authority to take actions intended to assist them in ascertaining whether the gaming operations complies with the Compact. For example, Section 7.2 provides that the TGA "shall investigate any reported violation" of the Compact and "report significant or continued violations of this Compact ... to the State Gaming Agency." Section 7.4 grants the SGA the right to inspect the Casino and all records relating thereto, subject to certain conditions, in order to ascertain Compact compliance, and Section 7.4.4 grants the SGA "access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

In short, there is a clear distinction in the Compact between the authority to promulgate binding regulations and the authority to ascertain whether the gaming operation complies with those regulations and with the Compact. The TGA alone is entrusted with the first type of



authority – except when the Association approves a regulation, in which case the State may also regulate – whereas the TGA and SGA are both granted the second type of authority. The State's role is thus limited in that the State may not – except by approval of the Association – pass regulations that bind the Tribe or the Casino. The State can only monitor Compact compliance and, if it perceives a violation, commence dispute-resolution procedures or seek Association approval for a regulation.

In conclusion, the Commission's stated intent to bind tribes to requirements that are not included in Tribal-State compacts through a process that was not sanctioned in the Compact would violate both the Compact and IGRA. IGRA expressly precludes unilateral state regulation of tribal gaming and instead calls for a balance of state and tribal regulatory power achieved through a negotiated compact. The Commission may not unilaterally usurp additional power for itself. Nor may it upset the power balance negotiated by tribes and the State in the Compact. It is precisely this aspect of the Commission's current action that would force tribes to litigate against the Commission's promulgation of CGCC-8.

Chahlut

Sincerely,

Gary W. Archuleta

Tribal Chairman

Mooretown Rancheria

GWA/sw/llw



# Dry Creek Gaming Commission 190 Foss Creek Circle Suite B Healdsburg, CA 95448 Phone: 707-473-2100 Fax: 707-473-2172

September 4, 2009

Dean Shelton, Chairman Attn: Jason Pope, Legal Division State of California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231

Re: Response to the CGCC's August 20, 2009 Letter

Dear Chairman Shelton:

The Dry Creek Rancheria Band of Pomo Indians ("Tribe") respectfully submits the following comments on the California Gambling Control Commission's ("CGCC") letter dated August 20, 2009, titled "Notice of Amended Version of CGCC-8 Incorporating Changes From Tribal Representatives; Re-Adoption Hearing Calendared for Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards); and Invitation for Further Comments."

The Tribe first questions the characterization of the April 15, 2009 version of CGCC-8 as an "Amended Version." We know of no action on the part of the CGCC to formally adopt that version of the regulation. In fact, the CGCC's accompanying letter itself explains that the last version of CGCC-8 to receive formal action was the October 14, 2008 version. Accordingly, we object to this characterization.

We note further that the April 15<sup>th</sup> version of CGCC-8 continues to contain some of the same mandatory language noted in our earlier correspondence, language that attempts to broaden the authority of the agency beyond that which was envisioned when our Compact was negotiated. This attempt to exercise governmental regulatory authority over sovereign Indian tribes is unsupportable. Without a tribe's consent and approval, the CGCC lacks authority to require tribes to do anything, let alone act in the particular ways mandated by CGCC-8.

The Compact granted the Tribal Gaming Agency ("TGA") – and not the State – authority to unilaterally pass and enforce regulations that bind the tribe's gaming operation and implement the Compact. And it granted the State authority to inspect tribal gaming operations to determine whether the Compact is properly implemented. If, in exercising this authority, the State believes that a tribe is violating a provision of the Compact, the State is authorized to initiate dispute resolution proceedings in accordance with Section 9 of the Compact as a means of bringing the tribe into compliance with the

September 4, 2009

Compact. But the CGCC may not attempt to achieve compliance by passing a regulation that purports to regulate tribes and their gaming operation without doing so within the confines of the Compact, an action that the CGCC appears poised to take.

While the Compact does contemplate passage of some regulations by the SGA – in Section 8.4 – it also requires that any such regulations be passed in accordance with Section 8.4.1. And Section 8.4.1 states unequivocally that a regulation passed by the SGA will not "be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association ...." Thus, while the Compact does permit the State to pass regulations that foster statewide uniformity, it also provides that the State can only do so upon Association approval. Without approval of the Association, the CGCC is not empowered to enact regulations that would bind the tribes. And here, no such approval has been obtained.

Lastly, the Tribe takes issue with the CGCC's conclusion that the Task Force Report is merely "a compilation of comments" on the April 15<sup>th</sup> version of CGCC-8. As is correctly noted in the August 20<sup>th</sup> letter, a Task Force was created by an official vote of the Tribal-State Association at its June 4, 2009 meeting in order to "review and address" the April 15<sup>th</sup> version. As a subset of the Association, the Task Force operated within the Association process and included participants from both the tribes and the state. To imply that the Task Force Report "included a revised version of CGCC-8 put forward by the Tribal Delegate volunteers" is simply untrue. Both tribal and state representatives participated in the drafting of the Task Force version of CGCC-8, with revisions being made to address the comments of all. And notably, the final product garnering the support of the Bureau of Gambling Control, one half of the state representatives to the Association. Thus, to suggest that the operation of the Task Force was not in accordance with the Association process is to potentially ignore the role of the Association in breach of the Compact.

For each of these reasons, we strongly urge you to give proper consideration the Task Force Report and accompanying version of CGCC-8.

Sincerely,

Vicki Wattles Chairperson





## SUSANVILLE INDIAN RANCHERIA GAMING COMMISSION

September 2, 2009

VIA U.S. MAIL & FACSIMILE (916) 263-0499 California Gambling Control Commission 2399 Gateway Oaks Drive, Suite 220 Sacramento, CA 95833-4231

Attn: Chairman Dean Shelton

Re: Recommendations on CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Susanville Indian Rancheria Gaming Commission (SIRGC) provides the following recommendation related to "Draft Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)" (CGCC-8) as requested by the California Gambling Control Commission (CGCC) in a correspondence dated August 20, 2009, and signed by CGCC Executive Director, Terresa Ciau. The recommendation contained herein is intended to supplement and be considered regarding CGCC-8:

The SIRGC diligently took part in the Association Task Force meetings from the beginning in a cooperative effort to determine mutually agreeable Compact compliant CGCC-8 language. The CGCC has failed to effectively engage the tribes in the Task Force process, Ms. Ciau indicates the CGCC-8 cannot "sponsor" the proposed alternative revised version of CGCC-8. For different reasons, the SIRGC likewise cannot "sponsor" the Task Force alternative. Specifically, the SIRGC believes the Task Force's alternative is certainly more acceptable.

SEP-8 64 7:41

In an effort to provide the CGCC with meaningful feed back prior to adopting any version of CGCC-8 as a "proposed" regulation in accordance with the compact and protocol of the Association, the SIRGC respectfully supports the alternative draft version of CGCC-8. The SIRGC believes the revised version of CGCC-8 substantially accomplishes the intent of the CGCC-8 without expending the State's role with respect to "on-site" regulation of gaming activities which are, and shall remain, the primary responsibility of the Tribe's regulatory gaming agency.

Sincerely,

Ginny Merales, Chairperson

Susanville Indian Rancheria Gaming Commission

ce: SIR Tribal Business Council
Philip Hogen, Chairman, National Indian Gaming Commission
Arnold Schwarzenegger, Governor, State of California
Jerry Brown, Attorney General, State of California
Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control
Rosette & Associates, PC



Wintun Indians

# Rumsey Indian Rancheria

TRIBAL GAMING AGENCY

September 4, 2009

Terresa A. Ciau
Executive Director
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833-4231

Re: August 20, 2009 Request For Comments On CGCC-8

#### Dear Ms. Ciau:

I write on the Rumsey Tribal Gaming Agency's behalf in response to your August 20, 2009 letter to tribal chairpersons regarding CGCC-8. Your letter is somewhat confusing, since it requests comments on CGCC-8, but references the April 15, 2009 version the CGCC proposed and also the version created by the Tribal-State Association Task Force. We assume you seek comments on the April 15 version, because that is the only one the CGCC has proposed and, as you note, the Task Force version reflects a "compilation of comments" by Task Force members that has not yet been approved or voted on by anyone. That said, we believe the Task Force take on the regulation is a vast improvement over the April 15 version.

In any event, on May 28, 2009, Chairman Marshall McKay wrote to Evelyn Matteucci, the CGCC's then-Chief Counsel, commenting extensively on the CGCC's April 15 regulation. For your convenience, I enclose a copy of Chairman McKay's letter. We believe no further comment on the April 15 version is necessary.

There is one additional point we would like to address. According to your letter, on September 24, 2009, the CGCC may "possibly" vote on "a final version of CGCC-8 regulations." We are unclear what that statement means, but to the extent it means the CGCC intends to vote on some unidentified version of the regulation that it intends to unilaterally impose on California tribes without Association approval, we believe doing



Terresa A. Ciau September 3, 2009 Page 2

would violate the Compact for the procedural reasons stated in Chairman McKay's May 28 letter.

Sincerely,

Leland Kinter

Chairman

Rumsey Tribal Gaming Agency

Encl.